

In the Matter of:)
)
Application for Certification) Docket No.
for the East Altamont Energy) 01-AFC-4
Center - Revised PMPD)
_____)

TUESDAY, JUNE 3, 2003

10:13 a.m.

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

William Keese, Presiding Member

Robert Pernell, Associate Member

HEARING OFFICER AND ADVISORS PRESENT

Major Williams, Jr., Hearing Officer

Al Garcia, Advisor

Rick Buckingham, Advisor

STAFF AND CONSULTANTS PRESENT

Lisa DeCarlo, Staff Counsel

Kristy Chew, Project Manager

Lorraine White

Tuan Ngo

Matthew Layton

Alvin Greenberg
Risk Science Associates

John Kessler
Kessler & Associates

PUBLIC ADVISER

Roberta Mendonca

APPLICANT

Greggory L. Wheatland, Attorney
Jeffery D. Harris, Attorney
Ellison, Schneider and Harris

Michael A. Hatfield, Manager, Project Development
Alicia Torre, Consultant
Kris Helm, Consultant
Calpine Corporation

APPLICANT

Thomas W. Andrews
Sierra Research

INTERVENORS

Robert Sarvey

Michael Boyd
Californians for Renewable Energy

Jim Swaney, Permit Services Manager
San Joaquin Valley Air Pollution Control District

ALSO PRESENT

Gregory R. Pohl
Modesto Irrigation District

Rick Gilmore
Byron Bethany Irrigation District

Sandra K. Dunn, Attorney
Somach, Simmons & Dunn
on behalf of Byron Bethany Irrigation District

Eric J. Teed-Bose
Mountain House Trimark Communities, Inc.
Paul M. Sensibaugh
Mountain House Community Services District

William J. McCammon, Fire Chief
Alameda County Fire Department

Susan Sarvey
Clean Air for Citizens and Legal Equality (CACLE)

Larry Fragoso, Battalion Chief
City of Tracy Fire Department

I N D E X

	Page
Proceedings	1
Opening Remarks	1
Introductions	1
Overview	4
Exhibit 4A-1	6
Comments - Revised PMPD	6
Topics	
Compliance Monitoring and Closure	6
Applicant	6
CEC Staff	20
Intervenor Sarvey	28
Intervenor CARE	29
Transmission System and Engineering	32
General Discussion	32
Applicant	34
MID	36
Intervenor CARE	38
Water Quality	39
Applicant	39, 73
BBID	43
CEC Staff	46
Intervenor Sarvey	60
Intervenor Boyd	61
Public Comment	62
Mr. Teed-Bose, Mountain House Trimark	62
Mr. Sensibaugh, Mountain House Community	63
Ms. Sarvey, CACLE	78

I N D E X

	Page
Comments - Revised PMPD - continued	
Topics - continued	
Worker Safety and Fire Protection	81
Applicant	81
Alameda County Fire Department	86
CEC Staff	102
Intervenor Sarvey	102
Intervenor Boyd	107
Mountain House Community Services	
District	112
Tracy Fire Department	115
Ms. Sarvey	121
Afternoon Session	130
Exhibit 4A-1	130/131
Comments - Revised PMPD - continued	131
Topics - continued	
Air Quality	131
Applicant	131,173,238
SJVAPCD	171
Staff	180,242,244
Intervenor Sarvey	226,242
Public Comment	233
Ms. Sarvey, CACLE	233
Ms. Griffith (By PA Mendonca)	236
Adjournment	246
Reporter's Certificate	247

P R O C E E D I N G S

10:13 a.m.

PRESIDING MEMBER KEESE: We're here for our second Committee Conference on the revised PMPD for East Altamont Energy Center. I'm Bill Keese, the Presiding Member on this Committee. And Robert Pernell, our Commissioner, joins me. Major Williams will be conducting our hearing. Rick Buckingham is new to the proceeding. Mr. Buckingham is now my Advisor. And Al Garcia, on the right, is Advisor to Commissioner Pernell.

Major is going to lay out the order in which we will proceed today. We will insist that this proceeding continue to focus on the specifics of the issues before us. We will have general public comment at the end of the proceeding. But we will go through the items on which there is disagreement item-by-item.

Major, would you introduce the parties and then --

HEARING OFFICER WILLIAMS: Yes, thank you, Chairman Keese. Good morning, everyone. I'm the Hearing Officer, Major Williams, Jr. I would note that the parties are present. Mr. Gregory Wheatland for the applicant, along with the

1 project managers Alicia Torre, Mike Hatfield.

2 Staff is represented by Ms. Lisa
3 DeCarlo, staff counsel; Kristy Chew is the project
4 manager. Cheri Davis is no longer staff's project
5 manager in this matter.

6 Is anyone here from Western? Western is
7 not present. The intervenors are present. I see
8 Mr. Robert Sarvey and CARE, whose president is
9 Michael Boyd, is present.

10 Our Public Adviser is present, Ms.
11 Roberta Mendonca. She's in the back of the room.
12 Roberta, could you -- she's holding a blue card.
13 If anyone in the audience, public members, if you
14 have any questions today about what we're doing or
15 if you want to approach the mike and make public
16 comment, let Roberta know. She'll give us a blue
17 card, and that way we can put you on the agenda.
18 Okay?

19 I believe Mr. Rick Gilmore and Sandra
20 Dunn are present from the Byron Bethany Irrigation
21 District. And, in fact, we're going to
22 accommodate Mr. Gilmore's request that we do
23 water -- we had planned to do it last, but we'll
24 move it up so that we accommodate Mr. Gilmore's
25 request that he has to leave at 11:30. So we'll

1 take water early on before air. And then we'll do
2 air last.

3 Is anybody here from Modesto/Turlock
4 Irrigation District? Okay. I don't see anyone.

5 Oh, the other matter that we're going to
6 take up at a specific time is -- or close to a
7 specific time is worker safety and fire
8 protection. We have the Alameda County Fire Chief
9 due at 11:30, so we'll pick up with that.

10 I have blue cards here from Ms. Sarvey
11 and Mr. Fragoso. Are there any other members of
12 the public who would like to introduce themselves
13 at this time and let us know if you plan to be
14 making a statement? I understand that there's --
15 yes, sir.

16 MR. SWANEY: Just to let you know that
17 I'm here. I'm Jim Swaney with the San Joaquin
18 Valley Air District. We are one of the
19 intervenors. We did not file any comments on the
20 revised decision, but I am here in case any
21 questions come up.

22 HEARING OFFICER WILLIAMS: Thank you,
23 sir. I have you on the list, I must have
24 overlooked it. I'm glad you let us know.

25 Anybody here from Bay Area Air Quality

1 District? Okay.

2 After our conference here today it is
3 the Committee's intent to put this matter before
4 the full Energy Commission at its regularly
5 scheduled business meeting on Wednesday, June
6 11th. Please note that the business meeting is
7 scheduled to begin at 1:00 p.m. rather than the
8 usual time of 10:00 a.m. on June 11th.

9 It is the Committee's plan today not to
10 revisit uncontested topics or those topics where
11 there are minor disputes. We have the comments of
12 the parties. We will review those. And we don't
13 plan to take up valuable time today on those
14 issues.

15 Should the Committee deem it necessary
16 after today's conference is completed, the
17 Committee will make appropriate revisions to the
18 revised Presiding Member's Proposed Decision for
19 presentation to the full Energy Commission.

20 Accordingly, unless specifically
21 requested by a party, the Committee will take
22 comment from the parties only on those topics that
23 are significantly in dispute or where the
24 Committee made changes in the revised PMPD that it
25 deems worthy of further discussion.

1 So we will be taking up first compliance
2 monitoring and closure, transmission system
3 engineering, water quality, worker safety and fire
4 protection, and finally air quality.

5 The order of presentations throughout
6 the day will be as follows: applicant, agencies
7 identified with applicant such as BBID and Alameda
8 County Fire Department; staff; Western's not here;
9 San Joaquin Valley Air Pollution Control District;
10 intervenors; members of the public.

11 We have a few housekeeping matters that
12 we want to take up. We've already discussed that
13 we will try to proceed with worker safety and fire
14 protection at around 11:30 to accommodate Alameda
15 County's Fire Chief.

16 We also, the Committee wants to reopen
17 the record to include the East Altamont Energy
18 Center cooperation agreement between Alameda
19 County and the applicant. It's a rather long
20 document, 16 pages, signed by Scott Haggerty, who,
21 I believe, is the President of the Alameda County
22 Board of Supervisors, and the applicant.

23 We'll make it next in order. We're
24 going to reopen the record for the limited purpose
25 of including this exhibit as the next in order

1 under worker safety and fire protection. It will
2 be 4A-1. I have a copy of it up here.

3 UNIDENTIFIED SPEAKER: -- be provided
4 with that?

5 HEARING OFFICER WILLIAMS: Yes, you can
6 retrieve one right now, as a matter of fact.
7 Anyone who would like a copy of it.

8 We'll give you a chance to look at it
9 and make any objections before we leave today.

10 Okay, is there anything further that
11 needs to be addressed before we get started, as a
12 housekeeping matter?

13 Okay, then we'll proceed with
14 applicant's comments on the topic of compliance
15 monitoring and closure. Mr. Wheatland.

16 MR. WHEATLAND: Thank you. I'd like to
17 just say as a preface to my comments here today
18 that the applicant very much appreciates the time
19 and effort that the Committee has devoted to the
20 consideration of all the matters in this
21 proceeding; and the care and thought that has gone
22 into the PMPD and the revised PMPD.

23 And while there are a couple of items
24 that we still have some concern with, I wish to
25 stress that we are in substantial support with the

1 revised PMPD. And so if I comment on a few items
2 still of concern I don't want that to detract from
3 our overall support for what we think is an
4 excellent decision that would certify this
5 facility.

6 In the area of compliance we have
7 identified in our written comments one issue that
8 we are concerned with. That issue involves COM-3
9 and COM-11. And I apologize for raising this at
10 this stage in the proceeding, but we did not,
11 until recently, realize that there were conditions
12 that were included in the final staff assessment
13 that were not standard conditions for compliance.

14 These conditions appear to be unique to
15 this application and these conditions would
16 require the applicant to report to the Commission
17 Staff certain information regarding outages, both
18 planned and unplanned outages, for this facility.

19 The applicant certainly agrees that it's
20 important to report outages. And we do, in fact,
21 report outages for all of our facilities to the
22 ISO under the provisions of the ISO tariff. And
23 we certainly support, if the staff believes it's
24 important to have this information, the staff
25 being able to have access to that data under the

1 terms and conditions the ISO would deem
2 appropriate.

3 We are concerned, however, that
4 reporting this information directly to the
5 Commission Staff is a matter of great sensitivity;
6 and I'm sure as the Committee is aware there's
7 probably no information that's more sensitive to
8 the operation of electricity markets in California
9 as to when plants will be operating or will not be
10 operating.

11 At the moment there are not processes in
12 place at the Commission that would protect this
13 extremely confidential information.

14 So we would suggest, rather than
15 imposing this condition uniquely on East Altamont,
16 on an ad hoc basis, that the Commission consider a
17 generic approach to this issue, or consider
18 accessing the information through the ISO.

19 PRESIDING MEMBER KEESE: Mr. Wheatland,
20 staff also requested that the annual compliance
21 report include a listing of all outages of the
22 previous year and their causes, and any planned
23 outages for the coming year.

24 MR. WHEATLAND: Yes.

25 PRESIDING MEMBER KEESE: Would you object?

1 MR. WHEATLAND: Well, with respect to
2 the planned outages we would have the same
3 concern, that information is treated in the
4 strictest confidence by the industry and by the
5 ISO. That's extremely sensitive market
6 information.

7 For example, on the --

8 PRESIDING MEMBER KEESE: What month
9 you're going to be down?

10 MR. WHEATLAND: Yes, exactly.

11 PRESIDING MEMBER KEESE: Well, --

12 MR. WHEATLAND: And the duration of time
13 that we would be down. Those are the concerns.

14 PRESIDING MEMBER KEESE: What about
15 reporting the past activities, the outages of the
16 previous year?

17 In the annual compliance report --

18 MR. WHEATLAND: That information is
19 reported to the ISO, but to our knowledge it is
20 not made public by the ISO. And that's why we
21 suggested that the best way to access this
22 information would be through the ISO.

23 The applicant would have no objection to
24 the Commission Staff accessing that through the
25 ISO under the conditions that they would impose --

1 PRESIDING MEMBER KEESE: The Commission
2 would have no objection to being able to access it
3 at the ISO, either.

4 MR. WHEATLAND: Yeah, but it's just --

5 PRESIDING MEMBER KEESE: On an ongoing
6 basis. But, that is an ongoing discussion between
7 the Commission and the ISO. So, you would
8 prefer --

9 MR. WHEATLAND: At this moment we'd have
10 a -- we would prefer not to report the past
11 information unless it was under terms that the ISO
12 would approve.

13 COMMISSIONER PERNELL: I can't hear you,
14 I'm sorry.

15 HEARING OFFICER WILLIAMS: Mr. Boyd,
16 we're going to stick to the order. So just note
17 your remarks, and then when your turn comes you
18 can --

19 PRESIDING MEMBER KEESE: All right on
20 that issue. Staff also had some revised language.

21 MR. WHEATLAND: Oh, for COM-9? Would
22 you like me to address COM-9 at this point?

23 PRESIDING MEMBER KEESE: Yes, if you're
24 done with that issue.

25 MR. WHEATLAND: Yes, I'm done with COM-3

1 and COM-8, if the Committee has no more questions
2 on that.

3 COMMISSIONER PERNELL: I have a question
4 on that. I'm assuming that you're reluctant
5 because of confidentiality?

6 MR. WHEATLAND: Yes, that's correct.

7 COMMISSIONER PERNELL: And you say that
8 we can access the information from the ISO
9 depending upon their conditions?

10 MR. WHEATLAND: Yes, we would have no
11 objection to obtaining the information through the
12 ISO under the terms of -- they have strict
13 procedures in place for protecting the
14 confidentiality of that information. I would
15 assume that if the Commission were to honor those
16 same terms that they would have access, as a
17 sister agency, on the same basis.

18 But right now those procedures are not
19 in place.

20 COMMISSIONER PERNELL: The ISO
21 procedures are not in place?

22 MR. WHEATLAND: At the Energy
23 Commission. In other words, the ISO, because that
24 information is so sensitive there are very strict
25 rules about the handling of that information

1 within their own staff, who can see it. There's
2 restrictions on that information not being taken
3 out of the building, not being kept on the general
4 email system. There's a lot of ways that they try
5 to protect that information because it could
6 significantly impact --

7 COMMISSIONER PERNELL: I understand --

8 MR. WHEATLAND: -- the market --

9 COMMISSIONER PERNELL: -- that part. I
10 guess my point is that if they have strict rules
11 for confidentiality of the information, whether or
12 not we could access it, will your company give us,
13 or at least -- here's what I would think of as a
14 solution.

15 If you could, through a communication,
16 let the ISO know that we need the information,
17 because right now we don't know that they would
18 give it to us, because of the rules that you've
19 just cited. So to say that we can go get it from
20 the ISO might be a little premature, if we don't
21 know that we can get the information from the ISO.

22 PRESIDING MEMBER KEESE: Do I hear you
23 representing that Calpine would have no objection
24 to us getting this information from the ISO if we
25 agreed to hold it confidential to the same degree

1 that the ISO holds it confidential?

2 MR. WHEATLAND: That's correct.

3 COMMISSIONER PERNELL: Right, and what
4 I'm -- I know you wouldn't have any objections,
5 but that doesn't mean that they would give it to
6 us unless you give them permission to give us the
7 information.

8 MR. WHEATLAND: Yes, we could give
9 permission under those terms.

10 COMMISSIONER PERNELL: Okay, thank you.

11 PRESIDING MEMBER KEESE: Thank you.

12 Okay, the other issue.

13 MR. WHEATLAND: The other issue is COM-
14 9, and this is a -- I need to give you just a
15 brief bit of background with respect to COM-9.

16 The portions of COM-9 that were in
17 dispute were not in the preliminary staff
18 assessment, they were not in the final staff
19 assessment. They were proposed for the first time
20 by the Commission Staff in an errata to the final
21 staff assessment that was released on October 1st.

22 On October 7th of last year there was a
23 workshop to discuss the final staff assessment,
24 but unfortunately Mr. Greenberg was not able to
25 attend that workshop. So the applicant had no

1 opportunity to discuss with Mr. Greenberg or the
2 Commission Staff its concerns about COM-9.

3 We, nevertheless, did give the staff a
4 written list of our concerns with COM-9. And on
5 about October 30th or 31st, after the close of the
6 evidentiary hearings, the Commission Staff issued
7 a clarification to COM-9. And it is that
8 clarification that is the basis of what is in the
9 PMPD and the revised PMPD.

10 In the spirit of trying to work out a
11 solution with the staff to this, we had suggested
12 several of what we considered to be minor wording
13 changes. And it is those wording changes that are
14 now disputed in the staff's comments on the
15 revised PMPD. Those minor wording changes had
16 been adopted by the Committee in the revised PMPD.

17 The important thing to know about COM-9,
18 and I think that this is highlighted in the
19 staff's comments -- the staff state in their
20 comments on page 4 that the adoption of the
21 changes that we would propose to COM-9 would lead
22 to an inconsistent application of security
23 measures without a justifiable reason for the
24 inconsistency.

25 What's important to know is that these

1 provisions about COM-9 talk about a vulnerability
2 assessment; and that talk about the requirement of
3 background checks for certain personnel are
4 conditions that are newly proposed by the staff.
5 These have not been part of the standard
6 conditions in this area. They have been proposed,
7 to our knowledge, with respect to the Magnolia
8 project; also with respect to the Malburg
9 Generating Station, although the staff cites the
10 wrong AFC number here.

11 But it is only in those two proceeding,
12 plus this one, that they are proposed. I was
13 involved, for example, in the Russell City
14 proceeding, and no such conditions were proposed.

15 So all but two of the past Commission
16 decisions have not had such conditions. And to
17 say that the changes that we are suggesting here
18 should be rejected because they would lead to an
19 inconsistent application of security measures, I
20 think, is incorrect.

21 We're talking about really a brand new
22 area of requirements that are being proposed by
23 the staff for the first time in recent
24 proceedings. And at least with respect to our
25 proceeding these are being proposed very late in

1 the process, not included in the FSA, not
2 discussed at workshops, and without a full
3 evidentiary support.

4 We would encourage the Committee, if
5 there is any concern or dispute about this, and if
6 the applicant's wording changes are not to be
7 adopted, that you would consider addressing this
8 area of security, which is obviously very
9 important, as a generic proceeding that would
10 apply to all plants, including this one.

11 If indeed there is a concern about
12 wanting to do a vulnerability assessment, then
13 that vulnerability assessment would apply to all
14 plants, and not just on an ad hoc basis.

15 So that would be our general approach to
16 this. I would also like to stress that with
17 respect to our suggestion of adding the word
18 "acute" to hazardous materials, there are a number
19 of hazardous materials, such as fuel such as oil
20 that would be used in equipment and many other
21 minor products that are simply not hazardous in
22 the sense of providing a security threat.

23 By the staff's own FSA these are not
24 types of products that would raise a security
25 concern. These are not the types of products that

1 would lead to a catastrophic event.

2 And for the staff to suggest that we
3 must conduct a background check of every person,
4 every vendor that would supply such product to
5 this plant, such as oil that would be used in
6 equipment, we think would be overly burdensome and
7 unnecessary.

8 There is a proper balance to security,
9 and security is very important. And if it's
10 necessary to strike that balance, we'd urge you to
11 do it under a generic proceeding.

12 Thank you.

13 PRESIDING MEMBER KEESE: Mr. Wheatland,
14 before we leave you on that, would you comment
15 specifically on the staff's suggested language
16 change, and I'm referring to their comments on
17 pages 3 and 4, where there's -- I will let staff
18 tell us exactly what they had in mind, but there
19 seems to be an indication that they're asking for
20 a vulnerability assessment which meets federal and
21 state standards, which might well include that
22 certain hazardous materials were not subject to a
23 vulnerability -- in a vulnerability assessment,
24 that they were not vulnerabilities.

25 MR. WHEATLAND: Right. Well, we

1 certainly would want to do any assessment that was
2 necessary to meet a state or federal standard.

3 The problem that we're facing in this proceeding
4 is that those standards haven't been clearly
5 articulated by the staff. They haven't listed
6 those, for example, as applicable LORS to which we
7 must meet.

8 Because there were added so late in the
9 proceeding there just hasn't been the groundwork
10 to spell that out in a way that's really workable.
11 We want to meet all the applicable LORS, but these
12 haven't been, to our knowledge --

13 PRESIDING MEMBER KEESE: So you have
14 reviewed the language in 9, 10 and 11, and it's --
15 I mean --

16 MR. WHEATLAND: It's still --

17 PRESIDING MEMBER KEESE: -- I realize
18 this came in, all of these documents have come in
19 very late for everybody to look at.

20 MR. WHEATLAND: Yes.

21 PRESIDING MEMBER KEESE: But you've
22 reviewed these and they're not acceptable?

23 MR. WHEATLAND: They're not acceptable.
24 And if I could just explain to you briefly, for
25 example, one reason why. I think they're still a

1 work in progress.

2 And for example, take number 10 that
3 reads, "site access for vendors and requirements
4 for hazardous material vendors to conduct
5 personnel background security checks." And here
6 the staff is deleting the language of personnel
7 delivering bulk chemicals to EAEC.

8 The way this is written appears to me
9 that we would have to conduct a personnel
10 background security check for all vendors, not
11 just the people that are delivering the products
12 to the site, but the other employees of that
13 vendor.

14 And the requirement just doesn't make
15 any sense to us, and we don't see the basis for
16 striking that language.

17 And so I think we would want to find the
18 right balance, but this, in our view, would not
19 meet it. The other sections that we believe are
20 similarly defective and still need quite a bit of
21 refinement.

22 PRESIDING MEMBER KEESE: Thank you.

23 Does that conclude --

24 MR. WHEATLAND: Yes, it does, thank you.

25 HEARING OFFICER WILLIAMS: Staff.

1 MS. DeCARLO: Yes, staff has no
2 objection to the deletion of COM-3 or the
3 paragraph 11 of COM-8. And no objection to
4 deletion of reference to requirement to submit
5 information on past outages.

6 Those were initiated during the
7 emergency, energy emergency, and they are not
8 necessary anymore.

9 PRESIDING MEMBER KEESE: Thank you. The
10 Committee was so inclined.

11 MS. DeCARLO: And for a response to the
12 applicant's comments on COM-9 I defer to Dr. Alvin
13 Greenberg.

14 DR. GREENBERG: Thank you. While I
15 appreciate the fact that when we first started
16 these hearings that the applicant was the first
17 applicant to have to review security measures,
18 they are not now the first. In fact, there have
19 been now decisions involving other power plant
20 applications and applicants that have been
21 accepted by the applicant that are exactly the
22 same as what the staff has proposed. So I believe
23 now they might be the third facility.

24 Let me also state that every facility
25 that is now coming through the siting process has

1 been asked to agree to the same condition of
2 certification. And we are in the process of
3 developing a procedure by which we would come
4 before you for existing power plants to develop
5 the same procedure.

6 So, in a sense, this is indeed a level
7 playing field, and that we are not asking this
8 applicant to do anything different than we are
9 asking all other applicants coming before you, and
10 what we will soon be asking all other owners and
11 operators of power plants in the State of
12 California certified by the CEC under your
13 jurisdiction to do.

14 PRESIDING MEMBER KEESE: So the timing
15 of that is?

16 DR. GREENBERG: I can't speak for
17 management. Sometime this year.

18 PRESIDING MEMBER KEESE: Staff would
19 like to present it sometime this year, and
20 hopefully be -- would such action supersede what
21 we're doing here?

22 DR. GREENBERG: No, it would be --

23 PRESIDING MEMBER KEESE: If we wound up
24 with, you know, we'll probably wind up with
25 something different than the language you applied

1 in the last two cases and here. Which one would
2 apply?

3 DR. GREENBERG: It's going to be very
4 much the same, Commissioner Keese. It's --

5 PRESIDING MEMBER KEESE: You're going to
6 present very much the same?

7 DR. GREENBERG: Yes. If anything --

8 PRESIDING MEMBER KEESE: Recognizing the
9 hearing process, it will probably be a little
10 different.

11 DR. GREENBERG: Yeah. And also
12 recognizing that it is a new world that we are
13 living in, and again I appreciate the fact that
14 the applicant, here, was the first to receive
15 this. And this was done, in their case, as he's
16 correctly pointed out, rather late in the game.

17 But as new guidelines, and let me just
18 say one thing, there has been no regulations from
19 the Office of Homeland Security. There are only
20 guidelines, guidelines from the Department of
21 Justice, guidelines from the American Chemical
22 Council, guidelines from the Electrical Power
23 Reliability Institute.

24 Ours will be guidelines, as well. So
25 there's not going to be a LORS, per se, coming

1 from the federal government that I know of, with
2 the possible exception of transportation from the
3 Department of Transportation.

4 But, nevertheless, everybody is still on
5 a very steep learning curve, and there will be
6 some refinements. But it will be at least this,
7 and there may be some more or there may be some,
8 as I say, refinements and explanations.

9 This is not onerous at this time. And I
10 think the applicant may be a little bit confused
11 in number 10, for example, when we're talking
12 about vendor background checks. We are not asking
13 the applicant to conduct a single background check
14 on any vendor.

15 What we're asking them to do is require
16 that the vendors conduct the background checks.
17 And this, again, is consistent with other types of
18 conditions of certification where we ask the
19 applicant to insure that a vendor takes a certain
20 route or does a certain thing.

21 PRESIDING MEMBER KEESE: I recognize in
22 the new world that we're going to be here, and I
23 would tend to think that if such a proposal came
24 before the Commission from staff, that the
25 Commission would very seriously consider adopting

1 guidelines for all existing power plants.

2 Would you object to referencing in this
3 case compliance with those guidelines?

4 DR. GREENBERG: No, I wouldn't at all.
5 I wouldn't object at all. That might be a very
6 good approach to take.

7 PRESIDING MEMBER KEESE: Thank you.

8 DR. GREENBERG: What we're concerned
9 about in this --

10 PRESIDING MEMBER KEESE: I understand
11 your concern.

12 DR. GREENBERG: -- case is getting them
13 to think about security while they're designing
14 their plant.

15 PRESIDING MEMBER KEESE: Thank you.

16 Commissioner Pernell.

17 COMMISSIONER PERNELL: Yeah, just one
18 point. I guess this is for Mr. Wheatland. Your
19 interpretation of the language is a little bit
20 different from the applicant (sic). Did he clear
21 that up, or is that still a problem for you?

22 MR. WHEATLAND: Well, it would still be
23 a problem for us in terms of vendors conducting
24 background checks of their own employees. Some of
25 the materials, especially those that are not

1 acutely hazardous, are shipped to the facility by
2 common carrier, for example. And so we oftentimes
3 do not have control over the delivery of those
4 materials.

5 They're shipped in the same manner all
6 over the United States. And so, it's going to be
7 a difficult process to require every vendor that
8 might supply a product -- and if you look on the
9 staff's assessment there's a lot of materials that
10 they agree would come in minor quantities that
11 don't pose a serious risk, yet nevertheless would
12 be subject to that new requirement for vendor
13 background checks.

14 But if I could also just add very
15 briefly that the applicant would certainly
16 stipulate to that type of condition that was
17 proposed by Chairman Keese that would subject this
18 facility to whatever generic guidelines were
19 promulgated by the Commission and applicable to
20 all projects. That might be a good way to address
21 this issue in lieu of the provisions of COM-9.

22 PRESIDING MEMBER KEESE: It would seem
23 to me that the guidelines would certainly be
24 established under any normal time sequence before
25 the operation of this plant.

1 DR. GREENBERG: The guidelines will be
2 delivered to management by June 14th. We have a
3 tentative date for training of CEC Staff on these
4 guidelines July 9th and 10th. Once everybody is
5 comfortable and understands that, I think that
6 management plans to bring it to the Commission.
7 But I can't speak for --

8 PRESIDING MEMBER KEESE: Thank you.

9 MR. GARCIA: Mr. Keese. I have a
10 question.

11 PRESIDING MEMBER KEESE: Mr. Garcia.

12 MR. GARCIA: Thank you. Dr. Greenberg,
13 I've got one question here. You know, recognizing
14 what the Chairman indicated that, you know, the
15 hearing process being the hearing process, and
16 what goes in isn't necessarily what comes out.
17 And the point that you made with regards that we
18 are in a very steep learning curve, how would you
19 propose that if this condition were imposed on the
20 applicant, how would you propose that that be
21 reconciled with whatever comes out of the hearing
22 process, the rulemaking?

23 DR. GREENBERG: If the Commission
24 chooses to adopt a generic approach applicable to
25 all power plants in the siting process, and then a

1 somewhat modified approach for those facilities
2 that are already existing, there is a little bit
3 of a difference in approach.

4 One is already built and one has to
5 modify the actual infrastructure, as opposed to
6 one is in the planning stages it makes it a lot
7 easier to build in the security.

8 It would be my crystal ball guess that
9 the melding of the two would be very easy because
10 we are not proposing anything that is different
11 from what is here in COM-9. COM-9 is actually a
12 very general, if you will, performance type
13 standard which lays out a few guidelines as to
14 what is required that you go ahead and do it.

15 The actual modeled power plant security
16 plan, if the Commission chose to adopt it, would
17 be a little bit more specific.

18 HEARING OFFICER WILLIAMS: Mr. Garcia, I
19 don't mean to cut you off, but we're under certain
20 time constraints here. I think, Mr. Greenberg,
21 are you going to be around a little --

22 DR. GREENBERG: Yes.

23 HEARING OFFICER WILLIAMS: Okay. If we
24 need to, we can revisit this, but we're going to
25 move on now to the intervenors.

1 MS. DeCARLO: If I may make just one
2 last comment. If the Committee does intend to
3 reference a future rulemaking proceeding we would
4 just request that some version of COM-9 remain in
5 the certification document as a placeholder. And
6 then referencing to be superseded at a future
7 point by whatever comes out of that process.

8 HEARING OFFICER WILLIAMS: Okay. Mr.
9 Sarvey, do you have anything under this topic?

10 MR. SARVEY: I'm not real familiar with
11 all that's gone on since it's all a new
12 development and I haven't been able to analyze it
13 as the applicant has, or the staff.

14 But I would encourage the Committee to
15 use the most stringent conditions possible in this
16 area because we are going to have several energy
17 facilities here. I feel that we will be a target
18 for terrorism. And that the most stringent
19 measures that we can take are very important in
20 that Mountain House community will have 20,000
21 homes next to this facility. We need to be really
22 positive that our security is tight and up to
23 standards with the Homeland Security guidelines.
24 And I would support anything that goes towards
25 that.

1 HEARING OFFICER WILLIAMS: Thank you,
2 sir. Mr. Boyd.

3 MR. BOYD: I had -- earlier on you were
4 talking about outage information, and I had some
5 information. Is this the appropriate time --

6 HEARING OFFICER WILLIAMS: Yes, it is.
7 Although the issue has sort of been removed.

8 MR. BOYD: I understand the issue is --

9 HEARING OFFICER WILLIAMS: Moot.

10 MR. BOYD: -- the security, facility
11 security. Basically the applicant represented
12 that the outage information is confidential market
13 information. And my understanding of ISO's rules
14 are that that confidentiality only remains in
15 effect for six months from the dates of the
16 occurrence. That after six months it's no longer,
17 under ISO rules it's no longer considered
18 protected information.

19 Additionally, a lot of that outage
20 information is available to the general public
21 through the Federal Energy Regulatory Commission.
22 In fact, as a party in what's called the San Diego
23 Gas and Electric versus Sellers, that's called the
24 refund proceeding, the FERC refund proceeding.
25 Probably people have heard about it, the \$9

1 billion the state's trying to get back from power
2 companies.

3 As a party to that CARE did discovery;
4 they had what was called a 100-day discovery. And
5 we actually asked Calpine a specific question, to
6 provide for each report the buyer and seller's
7 name, a list of planned and unplanned outages, the
8 address of the unit subject to outage, the
9 duration of the outage, whether or not there was a
10 Cal-ISO or DOE order to dispatch power, whether or
11 not dispatch was required under Cal-ISO or DOE
12 order to must-run or must-offer, any special
13 circumstances that violated federal or state LORS
14 with an explanation of such, and seller's cost of
15 each service, data covering the period January 1,
16 2000 through June 30, 2001.

17 And I have a copy here of their response
18 and it lists several units that were out.
19 Actually lists the two units they had out on June
20 14, 2000, the date of the blackout.

21 And they listed basically it was a
22 forced outage. But the ISO listed it as a planned
23 maintenance. So, I mean, the information's there
24 is the point I'm trying to make here.

25 HEARING OFFICER WILLIAMS: Okay, thank

1 you.

2 MR. BOYD: And all this information, all
3 these responses that I got through my data
4 requests was put into the record at FERC. And
5 then the FERC on March 26th took all this
6 information, which before then was considered
7 protected or confidential, and made it all public.

8 So it's all public right now as far as I
9 know.

10 PRESIDING MEMBER KEESE: Thank you, and
11 I just will reiterate what I said earlier, that
12 the Commission in numerous forms is attempting to
13 extend a broad confidentiality that is extended to
14 us to information at other agencies such as the
15 ISO. And we are working with them and with FERC
16 so that we can have this information for planning
17 purposes. And that's the purpose --

18 MR. BOYD: And that's what you should
19 have it.

20 PRESIDING MEMBER KEESE: So we're fully
21 on board with what your interest --

22 MR. BOYD: Okay, so the information's
23 there, that's the bottomline.

24 PRESIDING MEMBER KEESE: Right, and it's
25 just the method of getting it.

1 HEARING OFFICER WILLIAMS: Thank you. I
2 take it there's no public comment in this area?
3 Seeing none, then we'll move on to -- we're going
4 to move now to transmission system engineering. I
5 don't believe MID is present -- oh, you are
6 present now.

7 PRESIDING MEMBER KEESE: Let me then
8 give the -- MID has suggested language. I assume
9 the parties have seen it?

10 MS. DeCARLO: Yes.

11 PRESIDING MEMBER KEESE: Is there an MID
12 filing? Why don't I just -- yes, it was docketed.
13 Let me just read the words, Mr. Wheatland, because
14 I believe that they meet everybody's needs.

15 MR. WHEATLAND: Okay.

16 PRESIDING MEMBER KEESE: Section 8, sub
17 2, an executed facilities interconnection
18 agreement between Calpine and Western, and a
19 facilities transfer agreement among Western, TID
20 and MID.

21 So we move it from the agreement between
22 all four parties which is not the way it works, to
23 an interconnection agreement between, and we will
24 change it to the project owner and Western. And
25 then the second agreement, which is a facilities

1 transfer agreement between Western, TID and MID.

2 We can discuss this, or if that's
3 acceptable to all the parties we can just dispense
4 with the issue. You're welcome to see my --

5 (Pause.)

6 HEARING OFFICER WILLIAMS: Have you seen
7 the MID filing, Mr. Boyd, the one that we're
8 talking -- okay. Do you know if Mr. Sarvey's seen
9 it?

10 UNIDENTIFIED SPEAKER: Yeah, Mr.
11 Sarvey's --

12 MR. WHEATLAND: I'm advised that a
13 facility transfer agreement is a commercial
14 agreement that Calpine may or may not be a party
15 to. And --

16 PRESIDING MEMBER KEESE: Well, that's
17 the implication of this language.

18 MR. WHEATLAND: Yeah. And it's an
19 agreement that affects the transmission system
20 beyond the first point of interconnection.
21 Generally the Commission's jurisdiction extends up
22 to the first point of interconnection.

23 My suggestion would be that to the
24 extent that this is necessary it doesn't need to
25 be a condition. If a facilities transfer

1 agreement is necessary, it will occur. But there
2 seems to be many problems with specifying the
3 parties or terms of that in a Commission
4 condition.

5 PRESIDING MEMBER KEESE: Okay, well,
6 then this is not something that is easily agreed
7 to. Why don't you explain your position, and then
8 we'll go around the --

9 MS. TORRE: I guess I'm speaking here a
10 little bit in a sense for Western, but Western, in
11 discussions of this, actually has said that they
12 don't think it should be a four-way agreement.

13 In order for the interconnection to
14 occur there is a transfer of a half-mile segment
15 of the Wesley-Tracy transmission project that has
16 to occur. MID has all the leverage it needs in
17 this situation because they don't have to agree to
18 transfer that segment. So they have complete
19 commercial leverage.

20 However, in terms of the actual parties
21 and terms, there has been debate about whether
22 that should be a four-way agreement. And
23 Western's contract negotiator has said to me that
24 they actually believe that should be between MID
25 and TID and themselves.

1 There's a payment of money that would
2 have to be made by East Altamont, but that payment
3 of money might be in a bilateral agreement between
4 Western and East Altamont.

5 So I think that nobody right now knows
6 whether that's going to be handled through two
7 bilateral agreements, or through a single four-way
8 agreement. And it is a commercial transaction.
9 It's a purchase and transfer of a half-mile
10 segment that has nothing to do with the regulatory
11 process.

12 From the point of view of any concerns
13 in light of your TID may have regarding that
14 transfer, I just want to point out that they have
15 absolutely no obligation to make that transfer.
16 So if the terms of that purchase and transfer
17 agreement, you know, are not pleasing to them they
18 have no obligation to do it.

19 So, they don't need this for commercial
20 leverage.

21 PRESIDING MEMBER KEESE: Thank you.

22 HEARING OFFICER WILLIAMS: Staff.

23 MS. DeCARLO: The staff agrees with
24 condition proposed by MID. We feel that it's
25 important to keep MID and TID within the

1 condition. We do agree that the condition that
2 staff proposed previously, referencing the
3 interconnection agreement, is inappropriate,
4 though we do believe that this or some other
5 language referencing agreements with MID and TID
6 be incorporated.

7 HEARING OFFICER WILLIAMS: MID.

8 MR. POHL: My name's Greg Pohl. I'm a
9 Senior Mechanical Engineer with MID. We would
10 concur with CEC Staff's position.

11 Fundamentally this plant will not be
12 connected unless the transfer agreement -- I'll
13 use the word transfer agreement -- is effected.
14 And at the same time, whether it's in this
15 transfer agreement or some other agreement, we are
16 significantly environmentally impacted by this
17 plant and those issues have to be resolved.

18 We thought they were resolved in an
19 initial memorandum of agreement with Calpine and
20 TID and WAPA. This memorandum of agreement has
21 never been signed, but we believe that there's
22 tacit or implicit approval by Calpine of the terms
23 of this memorandum of agreement.

24 We're not trying to get the memorandum
25 of agreement input into this process, but that

1 initial understanding of the minds implied that
2 this transfer agreement would be effected.

3 PRESIDING MEMBER KEESE: The staff is
4 suggesting that they would like to keep it as a
5 part of our siting process approval. And
6 applicant has suggested that you have all the
7 control you need and it doesn't really need to be
8 here.

9 Is the agreement going to be a
10 facilities transfer agreement or might it be
11 something else?

12 MR. POHL: It may include some other
13 items, you know, that would mitigate the impacts
14 to our system.

15 PRESIDING MEMBER KEESE: Does MID
16 believe that it has to be in this document?

17 MR. POHL: Our attorneys have
18 recommended it, that's why we're supporting its
19 inclusion in this process.

20 PRESIDING MEMBER KEESE: In some form or
21 other?

22 MR. POHL: In some form or other, right.

23 PRESIDING MEMBER KEESE: Thank you.

24 HEARING OFFICER WILLIAMS: I take it,
25 Mr. Sarvey, do you have any comments? No comments

1 from Mr. Sarvey. Mr. Boyd?

2 MR. BOYD: I support what MID's asking
3 for. I think that it should be a condition in the
4 certification.

5 My only concern is the witness has
6 mentioned environmental impact several times. And
7 as in several other agreements in this proceeding,
8 we are concerned that these agencies are CEQA
9 agencies, are all subject to CEQA, and as such
10 their agreement and their approval of such an
11 agreement is a discretionary action taken by that
12 agency. And as such, should be a project under
13 CEQA and should require environmental review.

14 And therefore, while we do support what
15 MID's asking, we request that you do some
16 environmental review before you execute such an
17 agreement.

18 HEARING OFFICER WILLIAMS: All right,
19 then. I take it there's no public comment in this
20 area, either. Okay.

21 Final word from applicant?

22 MR. WHEATLAND: No, we don't have a
23 final word on this item.

24 But before we move to the next could I
25 just ask, were there any other comments that were

1 filed? The Committee had directed that comments
2 also be served electronically. We didn't receive
3 MID's. Were there any other comments that were
4 received?

5 HEARING OFFICER WILLIAMS: You got Mr.
6 Boyd's and Mr. Sarvey's comments? You didn't get
7 those?

8 MR. WHEATLAND: No.

9 HEARING OFFICER WILLIAMS: Okay. So we
10 need to make copies of those for you.

11 (Parties speaking simultaneously.)

12 COMMISSIONER PERNELL: Okay, let's just
13 make copies and get them to them --

14 HEARING OFFICER WILLIAMS: Mr. Sarvey,
15 do you have an extra copy of your comments with
16 you?

17 MR. SARVEY: We can get those.

18 HEARING OFFICER WILLIAMS: We'll go off
19 the record just briefly.

20 (Off the record.)

21 PRESIDING MEMBER KEESE: And my question
22 is staff has suggested that the 18 inches should
23 be replaced with language suggesting a pipe that
24 can accommodate, I believe it's 5900 flow.

25 MR. HELM: We are okay with that change.

1 We note that we provided a witness who testified
2 that that's an 18-inch pipeline minimum, and that
3 was undisputed in the record, so we don't
4 understand why it's still coming up. But we'll
5 agree to it.

6 PRESIDING MEMBER KEESE: Thank you. And
7 secondly, the staff made a suggestion that
8 applicant should make a request that they receive
9 the water. Would you have an objection to making
10 such a request?

11 MR. WHEATLAND: Well, pursuant to that
12 section of the code that is cited by the staff we
13 would have an objection under that code section,
14 because that code section is intended as a request
15 to agencies that already have an available supply
16 of recycled water. And that agency is obligated,
17 under that code section, to respond with specific
18 information within 120 days.

19 So we believe, as we outlined in our
20 previous briefs in this proceeding, the code
21 section is not applicable and should not be part
22 of --

23 PRESIDING MEMBER KEESE: But you would
24 not mind generically making a request that if they
25 have recycled water, reclaimed water, they make it

1 available to you?

2 MR. HELM: Indeed we have, both of us
3 executed a memorandum of understanding in this
4 regard. The board of directors at BBID has
5 approved a memorandum of understanding with the
6 applicant. And applicant has executed that
7 agreement.

8 It is in the record and it provides that
9 BBID will take all reasonable actions to develop
10 recycled water and we will use the water that they
11 so provide.

12 PRESIDING MEMBER KEESE: Thank you.
13 Okay, Mr. Wheatland?

14 MR. WHEATLAND: Well, a generic request
15 is fine. We felt we've already made that request,
16 but we have no --

17 PRESIDING MEMBER KEESE: I just heard
18 that, okay.

19 HEARING OFFICER WILLIAMS: Proceed.

20 MR. WHEATLAND: Okay.

21 PRESIDING MEMBER KEESE: I just had
22 those two questions and as an introductory I was
23 just trying to clear two issues off the table.

24 MR. WHEATLAND: We have just a couple of
25 brief comments in the water quality area that I'd

1 like to touch on briefly. And then Mr. Helm has
2 an item for an additional clarification to a
3 finding to which the staff -- we've discussed with
4 the staff, we'd like to bring up, that are not in
5 our written comments.

6 We have made some slight wording
7 suggestions for finding 28 and 26 and those, I'm
8 not going to repeat those there because I think
9 they're fairly explicit.

10 We've also made a suggested wording
11 change to soils and water-5; that the word potable
12 should be replaced with fresh to make it
13 consistent with the verification section in that
14 same section immediately below that refers to
15 fresh and recycled water service.

16 Those are our brief changes. With this
17 one addition that I'll ask Mr. Helm to explain to
18 you, we are in full support then of the
19 Committee's discussion of soils and water.

20 MR. HELM: The area that we discussed
21 with the staff just before was in finding number
22 4. There was quite a bit of discussion about
23 potential use of stormwater from the detention
24 basin into the cooling towers, and that is not a
25 design feature of this plant.

1 So we would like -- and the staff and
2 the applicant would agree after the words "storm
3 water flows" on condition 4, to insert the words
4 "from process areas." That would clarify that it
5 is our intent that in areas that have containment
6 to protect against spill of chemicals and the like
7 that in those areas we'll take the water into the
8 cooling tower and go into the ZLD system. And
9 that is the way the plant's designed.

10 But the bulk of the site, the stormwater
11 would go into a detention basin, and then
12 discharge to storm channels.

13 HEARING OFFICER WILLIAMS: Okay. Is
14 that it?

15 MR. WHEATLAND: Yes, thank you.

16 HEARING OFFICER WILLIAMS: BBID, would
17 you like to make your presentation at this point
18 before we go to the staff.

19 MR. GILMORE: Good morning, Major.

20 HEARING OFFICER WILLIAMS: Good morning.

21 MR. GILMORE: My name's Rick Gilmore,
22 General Manager, Byron Bethany Irrigation
23 District. To my right Sandra Dunn, General
24 Counsel for the District.

25 We'd like to appreciate the Committee's

1 effort and hard work on this revised PMPD. We
2 concur with the findings in the decision. We also
3 agree with discussions here this morning. And we
4 do find that it is appropriate to require that the
5 project use all the recycled water made available
6 to the project by BBID.

7 With respect to staff's response to
8 comments, response to the revised PMPD we'd like
9 to make one clarification, and then just a
10 comment. It appears that the staff continues to
11 mischaracterize the District's water rights.

12 There's a section here on page 6 talking
13 that the District has a profit motivation to use
14 as much fresh inland water as possible to justify
15 its full allocation from the State Water Project.
16 We'd just like to clarify for the record that we
17 are not a State Water Project contractor, and
18 we're diverting under our pre-14 water right.

19 And that being that we are a public
20 agency I don't think that there's a profit
21 motivation here in us providing water to this
22 project. And I'm sure that a lot of people
23 familiar with the East Altamont Energy Center and
24 financial economic advantages that this project
25 brings to the region realizes that.

1 The other comment that I have which we
2 reviewed late last night was the fact that there's
3 a paragraph in here that is comparing BBID to an
4 ammonia vendor. And we don't think that's
5 appropriate; in fact, we didn't quite understand
6 it. Maybe somebody else wrote this for staff,
7 but --

8 (Laughter.)

9 MR. GILMORE: -- I guess my question is
10 if vendors have to do some type of confidentiality
11 background check, if we're going to be classified
12 as a vendor are we going to have to do that, too?

13 (Laughter.)

14 MR. GILMORE: The last time we were here
15 we were accused of being a subsidiary of Trimark
16 Community. So, and now we're a vendor, so that's
17 all I have.

18 MS. DUNN: I don't have anything really
19 to add except for the fact that we have submitted
20 previously a number of comments with regard to the
21 need for BBID to have the flexibility to deal with
22 the practical realities of delivering water to its
23 customers 20, 30 years from now.

24 And we think the Commission's decision,
25 as it now stands, recognizes BBID's, and we

1 appreciate the fact that the Committee has taken
2 into consideration the comments that we've made.

3 HEARING OFFICER WILLIAMS: Thank you.
4 Staff.

5 MS. DeCARLO: Yes, I just want to make
6 one point and then I'll refer to the water staff
7 to make specific comments on the applicant's
8 proposed changes.

9 I just want to note that 13580.7 does
10 apply to reasonably foreseeable recycled water
11 supplies. Now, the evidence in the record shows
12 that recycled water will be available by 2005 in
13 this instance. And chances are -- the project in
14 the AFC is proposed to go online in 2005, and that
15 timeline has probably been delayed a bit. So
16 recycled water will be reasonably available by the
17 time the project goes online, and there's no
18 reason not to at least require formal request
19 pursuant to 13580.7 to simply request recycled
20 water service from BBID.

21 PRESIDING MEMBER KEESE: And you're
22 privy to the memorandum of understanding between
23 the --

24 MS. DeCARLO: Yes, and it doesn't make
25 any binding requirements. There's a lot of

1 loopholes in the MOU. We would just request that
2 pursuant to statutory -- statutorily available.

3 PRESIDING MEMBER KEESE: Well, we've
4 pretty well bound the applicant. Are you now
5 suggesting that we bind BBID?

6 MS. DeCARLO: 13580.7 does not bind BBID
7 whatsoever. It simply sets forth --

8 PRESIDING MEMBER KEESE: Okay, but the
9 MOU --

10 MS. DeCARLO: -- process procedure.

11 PRESIDING MEMBER KEESE: -- is between
12 the parties, and we are, in our proceeding,
13 binding the applicant to take everything that
14 comes to their door.

15 MS. DeCARLO: We would just suggest that
16 since 13580.7 is an available statutory procedure
17 that it be implemented in this instance.

18 PRESIDING MEMBER KEESE: Okay, thank
19 you.

20 COMMISSIONER PERNELL: Does that entail
21 more than just the request?

22 MS. DeCARLO: Well, it sets forth a
23 process. It's just the request, the applicant
24 makes he request and then BBID has a certain
25 number of days to respond that either it can

1 provide recycled water or it cannot. And if it
2 can, under what terms and conditions.

3 HEARING OFFICER WILLIAMS: Where would
4 this request be made in your vision?

5 MS. DeCARLO: We've requested, I
6 believe, 220 days prior to start of operation,
7 project operation, because it allows BBID, or
8 whoever is the recipient of the request, 120 days
9 to respond. So we feel that timeline provides
10 enough time for then CEC Staff to view the final
11 agreement prior to start of operation.

12 HEARING OFFICER WILLIAMS: Okay. You
13 had presentations?

14 MS. DeCARLO: Yes, and Lorraine White
15 and John Kessler are here to respond to the
16 applicant's proposed changes and their comments.

17 MS. WHITE: I'm Lorraine White; I'm with
18 the California Energy Commission water resource
19 staff. With me is John Kessler, a consultant to
20 the Commission, who participated in the analysis
21 for water resources.

22 The applicant has made two requested
23 changes of the Committee and I would just like to
24 address a couple of points.

25 The first is related to finding 28 in

1 which they request that the risk of degradation to
2 groundwater either be deleted from that finding or
3 changed to reflect that it be Trimark's opinion.

4 PRESIDING MEMBER KEESE: I'm sorry,
5 would you give us a page reference again there?

6 MS. WHITE: Pardon me, it's on page 17
7 of the applicant's comments.

8 PRESIDING MEMBER KEESE: Thank you.

9 MS. WHITE: The lower portion of the
10 page. And I just want to point out for the
11 Committee that it was staff's analysis that
12 discussed the potential for degradation to
13 groundwater when comparing land applications for
14 recycled water to land applications of fresh
15 water. And that there is a greater risk of
16 degradation to groundwater with the application of
17 recycled water to land use.

18 It's not simply Trimark's opinion, but
19 that is your finding is consistent with what was
20 presented in both the staff's analysis and as part
21 of the feasibility study that BBID produced. So I
22 would just suggest that your finding is fine and
23 needs no changes.

24 The second suggestion being made by the
25 applicant is to change the term potable water to

1 fresh water. And I would like to suggest that
2 this would, in fact, make it difficult to define
3 what costs we're actually talking about.

4 Are you talking about the cost of fresh
5 water to BBID, which is minimal, at best? Is it
6 the cost of fresh water to the ag customers? Is
7 it the cost of fresh water to Trimark? Is it the
8 cost of fresh water to the applicant, being
9 negotiated?

10 To use the term fresh water would be
11 inconsistent with statutory requirements that make
12 the comparability between costs for recycled water
13 to that of potable. Staff has always taken the
14 position that we would like to reflect
15 requirements already currently in the statutes
16 rather than come up with something new.

17 We suggest that your comparison is
18 appropriate to potable water and not fresh.

19 PRESIDING MEMBER KEESE: Let me ask, the
20 agreement between the applicant and BBID calls for
21 BBID to supply them with fresh water at the site
22 that then they will take to the standard of
23 potable? And to furnish them recycled water. I
24 would --

25 MS. WHITE: The fresh water will be used

1 for many purposes, not all of it will be put
2 through the package unit for potable --

3 PRESIDING MEMBER KEESE: But there will
4 probably be an established cost of that.

5 MS. WHITE: There will be an --

6 PRESIDING MEMBER KEESE: Would we not
7 assume that there would be a cost for that that
8 could be applied to that fresh water that arrives
9 at the project?

10 MS. WHITE: What that cost is currently
11 we have only had suggestions that it would be
12 approximately like \$100 an acrefoot, but Rick
13 would have to --

14 PRESIDING MEMBER KEESE: But there will
15 be a cost applied to that?

16 MS. WHITE: And if you choose to use --

17 PRESIDING MEMBER KEESE: Isn't that the
18 cost that would be compared with --

19 MS. WHITE: I would suggest, the way the
20 condition is written, it is up to dispute. You
21 could, based on whatever costs of fresh water,
22 because there's several rates for the same
23 product. You could pick and choose which rate.

24 Right now the condition is if they find
25 enough to specify what rate is to be used for the

1 comparison. And that's what I'm trying to clarify
2 for you, is that the rate --

3 PRESIDING MEMBER KEESE: So if it said
4 the cost of the fresh water delivered to the EAEC
5 project?

6 MS. WHITE: At a minimum that's the
7 specificity that would be required in order to
8 make it really clear what number you're going to
9 use for comparison, keeping in mind that there is
10 different rates for the same product within the
11 BBI District.

12 PRESIDING MEMBER KEESE: I think, on the
13 issue of fresh and potable, the Committee has come
14 to a conclusion that they're not the same.

15 MS. WHITE: Um-hum.

16 PRESIDING MEMBER KEESE: So, I --

17 MS. DeCARLO: I would just submit that
18 for staff's position that potable water is the
19 appropriate determination of whether or not
20 recycled water is reasonable, recycled water
21 price. It's referenced in Water Code section
22 13550, as well as the Water Recycling Act, that
23 when determining a reasonable price for recycled
24 water, it be compared to the cost of potable
25 water.

1 PRESIDING MEMBER KEESE: Which would be
2 higher than the cost of fresh water.

3 MS. WHITE: And, in fact, the Services
4 District, Mountain House Community Services
5 District, is taking the fresh water, treating it
6 to potable and will have a rate that could be used
7 within the BBI District for purposes of potable --
8 for purposes of that potable fee.

9 And from staff's position, staying
10 consistent with what the legal requirements are
11 under the statutes is appropriate in this case.

12 MR. GILMORE: Sounds like --

13 HEARING OFFICER WILLIAMS: Mr. Gilmore.

14 MR. GILMORE: -- a business deal here,
15 but what --

16 PRESIDING MEMBER KEESE: I'm not sure
17 who's on the right side of this --

18 MR. GILMORE: Yeah, but basically let me
19 give you BBID's perspective on here because I'm
20 sure that basically we do not control the potable
21 water costs. The CSD would do that, so it would
22 be to their advantage to inflate their treated
23 water costs when we execute this agreement.

24 Basically what we've done, we have an
25 M&I rate that's currently \$90 per acrefoot. We

1 would either use that rate or we would do a rate
2 study to identify what the rate for this
3 particular use would be, and that would be the
4 rate. And that would be what we would call the
5 raw water rate, or what we characterize as the
6 fresh water rate.

7 And what we would recommend, we would
8 like to see the term fresh water rather than
9 potable water. I understand there's an issue
10 here, but that's our perspective on that.

11 HEARING OFFICER WILLIAMS: Thank you.
12 Let's move to -- are you done --

13 COMMISSIONER PERNELL: I have one
14 question for staff.

15 HEARING OFFICER WILLIAMS: I don't think
16 they're done yet. Mr. Kessler, do you have
17 something, too?

18 MR. KESSLER: Yes. We just wanted to
19 clarify that the change suggested by the
20 applicant, this would be to finding in conclusion
21 number 4 on page 359, to insert the words
22 "stormwater flows from process areas" was
23 satisfactory with us.

24 PRESIDING MEMBER KEESE: I understand
25 that.

1 COMMISSIONER PERNELL: I just wanted to
2 follow up on something BBID said when they first
3 approached the mike, in terms of staff referencing
4 profit motivation in your comments.

5 You know, we've always been kind of
6 professional in what we do and I don't think that
7 it's appropriate to have language that points out
8 whether it's true or not, I mean we want to be
9 above -- well, I just think we should be
10 professional and profit motivation and ammonia
11 vendors and all of those other little catchy
12 phrases I don't think has any place in staff's
13 analysis. We want the facts. And there shouldn't
14 be any name-calling. That goes for the staff, the
15 applicant, intervenors and everybody. I mean we
16 are professionals here and we should conduct
17 ourselves as such in public, as well as in your
18 writings.

19 So, I would want to see those type of
20 phrases deleted.

21 MS. DeCARLO: We apologize if there was
22 any implication that the tone was a negative one.
23 We weren't intending to be derogatory in any
24 fashion. We were merely trying to elucidate the
25 situation. With reference to the anhydrous

1 ammonia vendor it was merely an attempt to not
2 equate the problems associated with anhydrous
3 ammonia, but merely to associate the vendor
4 position of both parties, as a supplier, as
5 opposed to a regulatory agency such as the San
6 Joaquin Valley Unified Air Pollution Control
7 District.

8 And in terms of the profit motives we
9 were just trying to further elucidate the issue
10 that that pure availability of recycled water
11 would not be the sole consideration for
12 determining whether or not East Altamont gets
13 recycled water if BBID were to be the one to
14 determine that.

15 And we did not intend to be derogatory
16 in any manner, and we apologize if that's how that
17 came forth.

18 COMMISSIONER PERNELL: And I'm sure that
19 given the level of your professionalism you can
20 come up with some other ways to articulate that
21 point.

22 MS. WHITE: If I might add, one of the
23 things that we have been trying to stress in this
24 proceeding is that the choice that BBID will make
25 as to whether or not it provides or makes

1 available recycled water to EAEC is not simply
2 going to be a decision based on the production of
3 that resource by Mountain House Community Services
4 District.

5 Their comments in the record have
6 suggested that they will use a variety of
7 different factors to weigh who, when and if
8 recycled water is provided to customers within
9 their District. And we wanted to stress that the
10 way the condition is written currently, placing
11 that decision entirely within BBID's authority
12 poses the risk that this project may, in fact,
13 over its life, never use recycled water.

14 That, in fact, the condition allowing
15 BBID to choose if and when may result in no
16 recycled water consumption by EAEC. And that has
17 been a major concern of staff, that there not be
18 adequate certainty provided in the condition as
19 it's currently proposed in the revised PMPD to
20 guarantee that the project will use recycled
21 water. Other incentives exist that may affect
22 that decision.

23 We have suggested in our revisions to
24 soil and water-5 language under existing statute
25 that provides a greater level of certainty that

1 recycled water, when produced by Mountain House
2 Community Services District, and provided within
3 BBID's district will, in fact, be used by the
4 project rather than simply discharged to Old
5 River.

6 PRESIDING MEMBER KEESE: The discharge
7 to Old River is really moving quite a ways. Your
8 concern is, I would gather, that recycled water
9 from BBID -- or from Mountain House be used
10 productively as a substitute for fresh water? I
11 mean that's your real concern?

12 MS. WHITE: And in fact, our findings
13 and our analysis, including the information we
14 garnered from the feasibility study produced by
15 BBID all point to EAEC being the best solution.

16 PRESIDING MEMBER KEESE: Exactly. But
17 if you could save x amount of water by using
18 recycled water at EAEC, and you could save exactly
19 the same amount of water by using recycled water
20 to water all the parks in the community, you will
21 have saved the same amount of fresh water either
22 way.

23 And it seems totally appropriate to
24 leave that decision to BBID, recognizing they
25 already have an MOU between them, and that the

1 most cost effective way of dispensing with this is
2 going to be to send it to EAEC.

3 MS. WHITE: But under our jurisdiction
4 to mitigate potential impacts by the project, not
5 to try and decide what BBID does in its district.
6 Our jurisdiction is over the project. And staff's
7 position is then that the project should be
8 required to use recycled water to offset its
9 impacts to fresh water supplies in the area. Our
10 jurisdiction allows us, under statutes, to require
11 that use.

12 Now, BBID, over the life of Mountain
13 House's development may have a variety of
14 different resources made available to it. They
15 may also have the option of working out agreements
16 with Tracy for additional recycled water
17 resources.

18 But our analysis shows that land
19 applications are less favorable than consumptive
20 uses by the project. And that, in fact, under our
21 authority we can require this project to use
22 recycled water.

23 PRESIDING MEMBER KEESE: And we have.

24 MS. WHITE: We don't necessarily agree
25 that that's what the statute or your condition

1 currently requires.

2 HEARING OFFICER WILLIAMS: Okay. Mr.
3 Sarvey.

4 MR. SARVEY: Yeah, I think we're stuck
5 on the classification of this water and I think
6 it's inappropriate. Basically, the water that
7 comes out of this aqueduct is used by cities for
8 drinking water; it's used for irrigation; it's
9 used for many purposes.

10 We don't use recycled water for most of
11 these purposes. So I think that's the distinction
12 that needs to be made. We shouldn't be stuck on
13 the classification of this water.

14 Now the important thing here is to stay,
15 you know, I support BBID's business operating
16 constraints and what they need to do to make their
17 district run smoothly and effectively, but the
18 fact is that the state is supporting recycled
19 water use in power plant cooling. And BBID's
20 operating interests should not override state
21 policy, as the RPMPD would allow.

22 State water policy clearly favors
23 recycled water be used in power plant cooling for
24 environmental reasons. And these are the
25 requirements the CEC is bound by.

1 Analysis of impacts to other water users
2 also is something that's being ignored in this
3 decision. So, you know, I think we need to focus
4 on the fact that the CEC is bound by state water
5 policy to require recycled water be used in this
6 plant to the fullest extent.

7 And I think we're getting offtrack
8 trying to classify this water, and worry about
9 BBID's operating interests, you know, and I do
10 respect their interests and they're good
11 businesspeople, and have been good people all
12 along. But I just think that's what the CEC, and
13 that's what the staff, I believe, is trying to say
14 is that state water policy binds us to require
15 recycled water in this plant. We can't allow BBID
16 to choose what type of water is going into this
17 plant. We don't have that discretion, so that's
18 all I wanted to say.

19 HEARING OFFICER WILLIAMS: Mr. Boyd.

20 MR. BOYD: My only additional comment is
21 I've heard a lot about the memorandum of
22 understanding and as with the previous speaker
23 from MID, our concern here is that that memorandum
24 of understanding was a discretionary action
25 approved by BBID. And as such, it qualifies as a

1 project under CEQA.

2 And my understanding is that BBID is
3 also a CEQA agency, and that BBID, to my
4 knowledge, has not completed any environmental
5 review on the memorandum of understanding.

6 And I raise that because basically I've
7 been informed by our counsel that we can't
8 challenge that memorandum of understanding until
9 you guys certify this document. And that's what
10 we're going after. We're going after all these
11 agreements.

12 Thank you.

13 PRESIDING MEMBER KEESE: I have
14 indications here that three members of the public,
15 or representatives of agencies, would like to
16 speak to the issue of water quality.

17 I'm not sure that they still have that
18 intent. Mr. Robinson, Ron Robinson, had a time
19 constraint. Is he still here?

20 Mr. Eric Teed-Bose.

21 MR. TEED-BOSE: Committee Members, Eric
22 Teed-Bose, The Trimark Communities. I'm here
23 basically to answer any questions or issues that
24 may come up. At this time I'd prefer to defer to
25 Paul Sensibaugh, the General Manager of the CSD,

1 and the be here to address any issues that come
2 up.

3 PRESIDING MEMBER KEESE: Mr. Sensibaugh
4 is our next --

5 MR. SENSIBAUGH: Thank you, Mr. Chairman
6 and Members of the Commission, I'm Paul
7 Sensibaugh, the General Manager for the Mountain
8 House Community Services District.

9 First I'd like to say that on a down
10 note, I'm extremely disappointed that the MHCS
11 did not receive the final wording of what you're
12 looking at today. And until this morning I did
13 not see this at all. And so today I'm reacting to
14 those paragraphs that we think affect the MHCS.

15 And I would like to reserve some time
16 before the 11th, I understand there's a hearing on
17 the 11th, to at least take within a couple days,
18 get some written comments regarding these
19 conditions.

20 For some reason we seem to be
21 continually overlooked in this process. We are
22 noted in here as being the owners of the recycled
23 water. Beyond that it looks like nobody wants to
24 talk to us or notify us or give us the exact
25 language or anything else. And I want to strongly

1 object to that.

2 I also want to say that I'm not here as
3 for or against this project. I'm simply here to
4 talk about conditions, as I've told you in the
5 past.

6 I would like to remind everybody that we
7 are the owners of the recycled water. We do have
8 a permit that goes to Old River. We also have a
9 land application permit that we can apply to land.
10 We also have a condition on our permit to the
11 river that says we have to do some testing. But
12 we already have permission to get into the river
13 and I'll indicate some comments here that are
14 different to that.

15 There may be an MOU between BBID and
16 EAEC. There's no MOU between MID and BBID and the
17 MHCSO. There's no MOU between Calpine and the
18 MHCSO. So whatever MOUs are floating out there
19 mean absolutely nothing.

20 When we talked about, on page 366 this
21 is all I have and all I can refer to, when it
22 talks about soils and water under the heading just
23 let me indicate that when they say shall accept
24 all recycled water offered to it by BBID, that
25 ought to say BBID/MHCSO, Mountain House Community

1 Services District.

2 We still have a position that BBID may
3 not have the legal right to convey our water at
4 their will. I think this Commission now has put
5 them in the position that they are in control of
6 recycled water to the point that either it may not
7 be affordable, or it may be that they squeeze us
8 to the point where our citizens are going to be
9 paying for the Calpine plant unnecessarily.

10 The amount that they might want from us
11 instead of our cost to provide water, which I've
12 already committed to, that that's all we want.
13 They may try to get that down to zero. They may
14 want us to maintain a pipeline. There's no MOU
15 here.

16 And I think it's very unfair for BBID to
17 say that we would inflate rates to them. Our
18 rates will be what our citizens pay, and those are
19 tightly controlled. Those rates won't change.

20 But when we have effluent all we want to
21 do is provide for the cost it costs us. And I've
22 said that from the very beginning, that it will be
23 no more than that.

24 We favor the recycled water and we are a
25 proponent of that. We do have some provisions

1 that before Calpine ever come along that we could
2 put recycled water on our golf courses. It's not
3 really practical or cost effective to pipe that to
4 the south and to the west throughout our
5 community. We will just go into the river. It
6 doesn't make sense.

7 So, I think that it has weakened the
8 position that they will actually be using our
9 recycled water, which is very much a shame,
10 because we can provide all the needs for this
11 project, as you already know.

12 Specifically also I would like to,
13 besides letting you know that we very well may
14 legally challenge BBID's right to take our water
15 and convey it, as opposed to us conveying directly
16 under contract, there are a couple other points
17 that I don't have my legal advice on directly
18 because they did not get this information. So our
19 County Council will have to look at that. That's
20 why I asked for a couple days.

21 I do want to point out that there are a
22 few erroneous comments. Number 26 on page 361 it
23 says that MHCSD is not currently permitted to
24 discharge tertiary treated water to Old River.
25 That is not true. We are permitted.

1 And it may only do so if it demonstrates
2 to the Regional Water Quality Control Board that
3 continued reuse through land irrigation would be
4 infeasible. As a matter of fact, we've already,
5 with our permit, indicated and proven that it's
6 infeasible. That's how we got our permit in the
7 first place. There's a condition on the permit
8 that says we need to do some testing. So that
9 comment is really not true.

10 And I'll skip through these real fast so
11 I don't bore you, but I would like to have the
12 chance to give it to you in writing. On page 362
13 they talk about the first number 28. It says
14 Mountain House currently plans to reuse effluent
15 from the first phase development on lands outside
16 the development. It has no current plans to
17 install a structure to reuse the effluent within
18 the development.

19 Well, before Calpine come along, and
20 certainly if this project doesn't go through for
21 some reason we do have some provisions. We were
22 going to put it on the golf course. We did have
23 plans. And we will pick up those plans again if
24 necessary. So that wasn't really entirely true.

25 On page 367, again where it mentions at

1 the top of that page, prior to commencing
2 operations owner shall submit a signed copy of
3 water supply agreement with BBID setting forth the
4 rates and conditions. That ought to say
5 BBID/MHCSD.

6 At this point that's all I've had time
7 to react to. Those are the main things. There
8 may be some things on the fire protection when
9 that issue comes up that I would like to address.
10 Otherwise, I would ask the Commission again if I
11 could have a couple of days to get something to
12 you in writing for consideration for your --

13 HEARING OFFICER WILLIAMS: How much time
14 do you need?

15 MR. SENSIBAUGH: Two days.

16 HEARING OFFICER WILLIAMS: Okay, why
17 don't you make those comments available to us
18 by --

19 MR. WHEATLAND: Yeah, may I ask, before
20 you set the schedule on that, --

21 HEARING OFFICER WILLIAMS: Yes.

22 MR. WHEATLAND: First of all, I want to
23 point out that Mr. Sensibaugh has previously
24 appeared in this proceeding. Mr. Sensibaugh has
25 been aware of this proceeding from the day the

1 application was filed.

2 Mr. Sensibaugh was under direction from
3 his board of supervisors for a period of time not
4 to appear. Mr. Sensibaugh declined to attend the
5 evidentiary hearings. He's had full notice and
6 opportunity to participate.

7 And so we don't believe that any
8 additional notice period for filing comments is
9 appropriate. He's had a full opportunity to
10 participate. And if he is not aware of this
11 proceeding, despite his participation, we believe
12 he has only himself to blame.

13 If you do decide to give him additional
14 time to file comments, we would respectfully ask
15 for an opportunity to reply.

16 UNIDENTIFIED SPEAKER: We object to this
17 treatment of the public; he's a member of the
18 public.

19 MR. SENSIBAUGH: First of all, it's not
20 true. My board never told me not to attend
21 previously, as you so say. And when I came to you
22 the first time, when we finally were a part of
23 this process and realized we needed to be
24 inserted, I did go to the board and get permission
25 to come and testify.

1 And this board, this Commission, took,
2 as I recall, what was the staff report from
3 previously, went back to a subcommittee and re-did
4 all that. At no time after that was the MHCSD
5 notified, given any information or known about
6 this hearing so that we could prepare or react to
7 these comments at all, zero.

8 HEARING OFFICER WILLIAMS: Yeah, well, I
9 agree to the extent that certainly you're not a
10 party to this proceeding. And because you're not
11 a party then you haven't been on our proof of
12 service list.

13 On the other hand, BBID is not a party
14 either, but they've certainly made their presence
15 felt.

16 So, it appears to me anyway that you are
17 similarly situated as BBID in that you may not be
18 a party, but you have information that the
19 Committee needs to adequately address the issue.
20 And because you have, you're somewhat of a
21 critical player in these proceedings, and we're
22 going to give you time that you requested to file
23 your comments.

24 We would ask you to have those comments
25 filed in our dockets unit by Wednesday, the close

1 of business Wednesday -- excuse me, Thursday.
2 Email those comments to the parties here today,
3 staff, applicant, Mr. Sarvey, Mr. Boyd. If you
4 don't have them you can get their email addresses
5 at some point today, as well as email them to me,
6 the Hearing Officer. And, of course, BBID. Okay?

7 So you might need to get some addresses
8 and what-have-you. And then we would ask that we
9 would give the parties until Monday to file
10 responses to those additional comments.

11 MR. SENSIBAUGH: I'll try to get the
12 emails from the staff --

13 HEARING OFFICER WILLIAMS: Okay.

14 PRESIDING MEMBER KEESE: Rupert, I'm
15 sure can -- Rupert will take care of that.

16 MR. SENSIBAUGH: And I greatly
17 appreciate that time period. I'm still mystified
18 as to why we aren't a player, at least as big a
19 player as BBID. We're going to be a community of
20 44,000 people; within the next two years, probably
21 five, three years 10,000 people.

22 HEARING OFFICER WILLIAMS: Yeah, well,
23 Mr. --

24 MR. SENSIBAUGH: We are mostly more
25 impacted than anybody by this project.

1 HEARING OFFICER WILLIAMS: Right, I
2 understand. Mr. Sensibaugh, again, I think you're
3 a critical player; I'm happy to see you here. I
4 wish you had been here earlier and played a more
5 extensive role, but now that you're here we'll
6 take advantage of it.

7 MR. SENSIBAUGH: Appreciate it.

8 PRESIDING MEMBER KEESE: And I'd just
9 ask, please be as specific as you can. This is
10 very late in the process. Next Wednesday we're
11 supposed to go with it, and the wording has got to
12 be right, so --

13 MR. SENSIBAUGH: We will --

14 PRESIDING MEMBER KEESE: -- please be as
15 specific as you can.

16 MR. SENSIBAUGH: We will be succinct and
17 specific.

18 HEARING OFFICER WILLIAMS: Okay, Mr. --
19 well, I guess we've already -- have we --

20 PRESIDING MEMBER KEESE: Yes, we did.

21 MR. KESSLER: Mr. Williams?

22 HEARING OFFICER WILLIAMS: Yes.

23 MR. KESSLER: If the Committee still
24 considers the comments by the CSD with regard to
25 BBID/MHCSD, I just want to point out that those

1 comments also reflect in soil and water condition
2 5, also.

3 HEARING OFFICER WILLIAMS: Okay. You
4 can also point that out in your response. Yes?

5 MS. DUNN: Could I make one comment with
6 regard to the comments made by Mr. Sensibaugh? I
7 think from BBID's perspective we didn't recognize
8 that there's a potentially adversarial role
9 between the Mountain House Community Services
10 District and BBID.

11 BBID has always acknowledged that they
12 would have to enter into -- or would be entering
13 into some agreement with Mountain House Community
14 Services District for the provision of recycled
15 water. And it's our intention to do -- and it's
16 the intention of BBID to do that at the
17 appropriate time.

18 HEARING OFFICER WILLIAMS: Yeah, I
19 understand, but again, Mountain House sees things
20 a little differently, I take it.

21 Applicant, final word?

22 MR. WHEATLAND: Yes, just two brief
23 points. At the beginning of their presentation
24 staff indicated that the reference in finding 28
25 to the risk of degradation was supported by the

1 final staff assessment, and I'd ask that they
2 provide a page reference for that. We couldn't
3 find any such reference.

4 And second of all, staff counsel
5 indicated that water code section 135080.7 didn't
6 require a mandate anything on BBID. And I'd only
7 urge the Committee to read the section because it
8 clearly does impose specific requirements in terms
9 of BBID's response to any request that's filed.
10 The response is not voluntary, but is mandatory.

11 MS. DeCARLO: But it doesn't require a
12 specific response. It doesn't dictate what the
13 response shall be.

14 HEARING OFFICER WILLIAMS: Okay, sir,
15 did you have --

16 MR. WHEATLAND: No, I think that
17 concludes our comments.

18 HEARING OFFICER WILLIAMS: Okay, then
19 Commissioner Pernell.

20 COMMISSIONER PERNELL: There was some
21 conversation about whether or not this project
22 would use recycled water and whether it would be
23 available to them, and I think from the
24 Committee's perspective our intent is for the
25 plant to use recycled water whenever it's

1 available.

2 And I understand staff has some concerns
3 that that might not happen. And it appears to me
4 that we have two districts that have recycled
5 water, or maybe one --

6 MR. HELM: Yeah, Mr. Sensibaugh provided
7 today that he's going to challenge BBID's
8 authority. The letter that he sent into the
9 record on this proceeding had an opposite point of
10 view. BBID is the only legal supplier of water.
11 And our memorandum of understanding is with BBID
12 for --

13 COMMISSIONER PERNELL: I'm not
14 questioning that. All I want to do is have staff
15 comfortable that the applicant is going to use
16 recycled water when it's available to them, which
17 is what I think the condition says.

18 So, if there's some reason why you're
19 not comfortable with that, maybe we could fix
20 that. But, --

21 MS. DeCARLO: The condition, as written,
22 we believe, does not require the use specifically
23 of recycled water if it's made available by
24 Mountain House Community Services District. We
25 believe that other factors could play into the

1 decision, given the current condition, on whether
2 or not East Altamont uses recycled water, even
3 though it may be available by Mountain House
4 Community Services District, and it may be being
5 discharged for lack of other customers.

6 COMMISSIONER PERNELL: So you have any
7 suggested language?

8 MS. WHITE: In fact we provided an
9 explanation as to why we think that other
10 incentives could result in BBID --

11 COMMISSIONER PERNELL: Okay, but I'm
12 simply trying to insure that there is recycled
13 water that the project would use recycled water
14 when it's available to them.

15 MS. WHITE: And we have offered a
16 revised condition in our brief that we think will
17 provide much greater certainty to that effect than
18 the language as currently being offered by the
19 Committee.

20 MS. DeCARLO: We believe the use of
21 13580.7 goes a long way into insuring that there's
22 at least some framework for the use of recycled
23 water.

24 COMMISSIONER PERNELL: Okay, so the
25 Committee will take that under advisement.

1 HEARING OFFICER WILLIAMS: Yes, sir, we
2 will.

3 PRESIDING MEMBER KEESE: Mr. Boyd, we're
4 going to try and finish up worker safety and fire
5 protection.

6 MR. BOYD: I only have one --

7 PRESIDING MEMBER KEESE: Okay. What?
8 Go ahead.

9 MR. BOYD: All I wanted to say real
10 quickly is that Mountain House, the Community
11 Services expressed concern about not knowing about
12 this, finding out at the last minute.

13 And I just wanted to point out that,
14 unlike the last hearing we had, this hearing there
15 was no ten-day -- there was no notice put in The
16 Tracy Press ten days in advance of this meeting.
17 So really, there was no way for the public to
18 really know that this was going to occur today.

19 And my understanding is that's required
20 under CEQA and NEPA, both.

21 COMMISSIONER PERNELL: Mr. Boyd, this
22 hearing was all on the news. So, I know that --

23 MR. BOYD: I understand, but there was
24 no legal notice put in the newspaper.

25 COMMISSIONER PERNELL: What you're

1 saying is no way the public knows?

2 MR. BOYD: Obviously the gentleman said
3 that he just heard about it today. I'm just --

4 COMMISSIONER PERNELL: Can we move on?

5 MR. BOYD: -- reflecting --

6 HEARING OFFICER WILLIAMS: Yes, we're
7 going to move on.

8 MR. BOYD: I'm just stating my opinion.
9 I mean you know I don't live here. But I do know,
10 I called The Tracy Press to ask if they had put,
11 had a notice from you guys, and they --

12 HEARING OFFICER WILLIAMS: Okay. Okay.
13 Yes, Ms. Sarvey. Yes, I'm sorry, I overlooked
14 your card. Please.

15 MS. SARVEY: Susan Sarvey, Clean Air for
16 Citizens and Legal Equality. I would first like
17 to comment on what happened with Mr. Sensibaugh.
18 I'm really deeply offended at what just occurred
19 with him.

20 This is the second proceeding that I
21 have participated in. And the people in this room
22 that do this for a living all the time understand
23 the process. I have dealt with numerous agencies
24 in the siting of the Tracy Peaker Plant and this
25 case. And people do not understand this process.

1 I get told repeatedly when I call them
2 up, Mountain House being an example, you are going
3 to be impacted by this, there are things that you
4 need to look at.

5 They assume you are going to call them
6 and send them all the information. And you don't.
7 We have to come to you and we have to ask to be
8 noticed. They have never been in a power plant
9 siting case before.

10 Now, that being said, I just really had
11 a problem with the way you treated him.

12 I did come to all the hearings. When I
13 had left the last one, I'm ignorant of water
14 issues predominately. I will admit that up front.
15 My understanding was we all left this room
16 believing that Calpine would use Mountain House's
17 water. At no time did anybody say that in order
18 for Mountain House to give their recycled water to
19 Calpine they had to first give it to BBID.

20 BBID is here for money. No other
21 reason. If they weren't going to make money they
22 would not be here.

23 In regards to all this argument about
24 language and water and everything else, I have a
25 solution. I said at the last hearing that I was

1 very concerned about how quickly the Central
2 Valley is growing; that we have droughts; and that
3 I was worried about 20 years from now that we have
4 enough water for all the people that live here.

5 If you do not like staff's language,
6 which I cannot understand why staff is taking such
7 a beating, then I suggest you put in a condition
8 that they use recycled water. And if they do not,
9 they must be required to provide mitigation for
10 taking drinking water to cool a power plant.

11 And to say that if they water a golf
12 course and they use BBID's water, that's the same,
13 it's all equal, one hand washes the other, that is
14 the same as the ridiculous emission reduction
15 credit program we have.

16 Somebody goes out of business ten years
17 ago. They come and buy a credit. They're not
18 making the air dirty. Bull. The air didn't have
19 that crap in it, and you're putting new crap in
20 it. Don't make the same mistake with water. You
21 make them use recycled water. They take clean
22 water away from people to drink, they have to
23 mitigate that impact.

24 Thank you.

25 HEARING OFFICER WILLIAMS: Thank you.

1 Okay, the Committee would like to take maybe five
2 minutes. Chief, is that okay? Okay. We'll take
3 five minutes.

4 (Brief recess.)

5 HEARING OFFICER WILLIAMS: We're going
6 to pick up with worker safety and fire protection.
7 As a housekeeping matter, the Fire Chief has given
8 us the, I guess the new comment -- they're not new
9 comments, but they have the appendices attached
10 that were not sent out with the electronic
11 version.

12 So, the parties might want to get the
13 full version to review. You can do it now if you
14 like. They're up here. We'll mark this -- well,
15 we'll just note for the record that the electronic
16 comments did not include the attachments and that
17 we do now have the complete version with the
18 attachments. So, again, they're up here if you'd
19 like to retrieve them.

20 And with that we'll proceed onto the
21 topic of worker safety and fire protection. And,
22 applicant.

23 MR. WHEATLAND: Thank you. First of
24 all, I'd like to say that the applicant's firmly
25 committed to having an effective program of worker

1 safety and fire protection. The applicant is
2 firmly committed to compliance with all applicable
3 LORS.

4 We do not, however, feel that the
5 condition that has been proposed as worker safety-
6 4 is necessary to achieve those goals.

7 By way of brief background and I'm glad
8 that the cooperation agreement is part of this
9 record, but by way of brief background the
10 applicant started with an assessment by the
11 Alameda County Fire Department and the staff that
12 found that the level of service to our facility by
13 Alameda County in the areas of fire protection,
14 EMS and hazardous materials from existing
15 facilities within Alameda County was fully
16 adequate to meet all county standards. And in
17 fact, met or exceeded the level of service that's
18 provided to other facilities that have been
19 licensed by this Commission for other plants.

20 But even though the existing level of
21 service was adequate, the applicant didn't stop
22 there. The applicant entered into a cooperation
23 agreement with Alameda County whereby the
24 applicant agreed to pay a substantial sum of money
25 for the relocation of one of the Alameda County

1 fire stations to a location that would be nearer
2 to East County.

3 This location had already been planned
4 by the county, but we agreed to pay a substantial
5 sum of money to facilitate that relocation.

6 But we didn't stop there. We also
7 agreed to provide \$500,000 in addition for
8 improved emergency services used to benefit
9 services and agencies providing service into the
10 Alameda County Mountain House area.

11 And we didn't stop there. We also
12 specified that at least half of that money -- or
13 approximately half of that money, I shouldn't say
14 at least -- but approximately half of that money
15 would be used for improving services either
16 through other agencies than Alameda County, or to
17 provide a direct benefit to other agencies who
18 respond to the Mountain House area.

19 So we feel that this project does, in
20 fact, comply with applicable LORS and provides a
21 high level of safety and fire response. And we
22 believe that the cooperation agreement facilitates
23 that level of response.

24 We believe that to the extent that fire
25 protection-4 would require a different agency,

1 other than Alameda County, to provide first
2 response, that that is contrary to existing law
3 and has many practical impediments. And I'll
4 defer to Alameda County to talk to you about some
5 of those impediments.

6 PRESIDING MEMBER KEESE: Let me
7 interject at this point that the Committee
8 believes that, having seen your filing, that you
9 have understood what our interest was.

10 For one reason or another applicant and
11 staff were in total agreement on this, that may be
12 why the Committee was not privy to what the
13 arrangement was with Alameda County. But the
14 Committee was totally unaware of what the
15 arrangement was.

16 The arrangement does, by its terms, take
17 care of some of the concerns that the Committee
18 came up with on our own, none of which were
19 addressed specifically during the discussion. We
20 had some very contentious issues in this case, and
21 this was one that sort of slipped by.

22 So we are now aware. It is now on the
23 record. And that should be noted here.

24 MR. WHEATLAND: Great.

25 HEARING OFFICER WILLIAMS: I would also

1 note for the record that I commend the applicant
2 for its efforts in this regard.

3 For future note, however, I would
4 strongly suggest that when there are such
5 agreements that are very important in any area,
6 that to prevent problems such as this from
7 occurring in the future, staff, particularly,
8 should insure that these agreements are either
9 made part of the FSA or otherwise submitted to the
10 Committee handling the case so that the Committee
11 is fully abreast of what background materials it
12 needs.

13 That wasn't done in this case, so it
14 should be done in the future.

15 PRESIDING MEMBER KEESE: And, Mr.
16 Wheatland, I would like to ask you to -- you have
17 mentioned the dollar figures. Could you give us a
18 hint, and I'll ask the Chief, also, a hint at what
19 was intended by the expenditure of the \$500,000
20 and by the expenditure of half of that other than
21 in Alameda County?

22 MR. WHEATLAND: Yeah, I'd like, if I
23 could, ask the Fire Chief to respond and --

24 PRESIDING MEMBER KEESE: That would be
25 fine.

1 MR. WHEATLAND: -- then Ms. Torre may
2 wish to add something in addition.

3 PRESIDING MEMBER KEESE: That would be
4 fine.

5 HEARING OFFICER WILLIAMS: Chief, you
6 may proceed.

7 CHIEF McCAMMON: Can I just ask a
8 question for clarification?

9 HEARING OFFICER WILLIAMS: Sure.

10 CHIEF McCAMMON: Does that mean that
11 findings 9, 10 and worker safety condition number
12 4 are no longer in their current form?

13 PRESIDING MEMBER KEESE: That means that
14 they're under serious reconsideration.

15 CHIEF McCAMMON: Okay.

16 PRESIDING MEMBER KEESE: The Committee
17 will discuss it after we hear what people have to
18 say today. But, not having been aware of a
19 condition that seems to be aimed very closely at
20 what the Committee wanted, we would like to hear
21 from you what it was you had in mind --

22 CHIEF McCAMMON: Okay, well, we -- and
23 I'll tell you --

24 PRESIDING MEMBER KEESE: -- you and
25 applicant had in mind when you did that.

1 CHIEF McCAMMON: Okay.

2 HEARING OFFICER WILLIAMS: Chief, if
3 you'd just, for the record, identify yourself
4 before --

5 CHIEF McCAMMON: My name is Bill
6 McCammon; I'm the Fire Chief of the Alameda County
7 Fire Department. And we're the jurisdiction that
8 has authority over fire protection for the EAEC.

9 Specifically related to the 500,000, one
10 of the areas where we continually find ourselves
11 threatened is in the area of air operations
12 related to wildland fires in the eastern Alameda
13 County, western San Joaquin County, all of Contra
14 Costa County and Santa Clara County, because we
15 rely on the State of California, California
16 Department of Forestry, for a helicopter that's
17 based almost in Santa Cruz County.

18 And one of the things we had been
19 working towards is we had partnered with the
20 Contra Costa Consolidated Fire Department in East
21 Bay Regional Park District to jointly operate a
22 helicopter during fire season that could also be
23 used for EMS transport during the times that it
24 was operational.

25 So one of the things that we were

1 considering early on in this was to use that money
2 as seed money for that program. And then that
3 helicopter would serve, as I said, Alameda, Contra
4 Costa, San Joaquin and Santa Clara Counties; and
5 it would be operated by the East Bay Regional Park
6 District.

7 So we felt that that was a good use of
8 the funds to provide a regional service to all of
9 the areas affected.

10 That was --

11 PRESIDING MEMBER KEESE: That's the --
12 are you --

13 CHIEF McCAMMON: That was the 500,000.

14 PRESIDING MEMBER KEESE: Okay, and
15 speaking specifically to the 250,000 to be spent
16 other than the county, does that apply to that,
17 also?

18 CHIEF McCAMMON: Well, that was our view
19 initially because again it would be going to a
20 service that all of the agencies that are impacted
21 by this project would directly benefit from.

22 Tracy Rural Fire Department would
23 benefit from that; Contra Costa Consolidated would
24 benefit from that; East Diablo Fire District,
25 which is north of here, would benefit from that.

1 As well as other departments in this valley area,
2 because we'd have an air resource that could be
3 used in this four-county area, which doesn't exist
4 all the time.

5 MS. TORRE: Perhaps I could just speak
6 for a minute to a little bit of the history or
7 intent behind this from the applicant's point of
8 view, which is not to say specific uses.

9 We started negotiating the cooperation
10 agreement with Alameda County in I guess the fall
11 of 2001. And we were looking for ways in which we
12 could be a good neighbor in our community. And a
13 number of the things that are in the cooperation
14 agreement are things that enhance the east county
15 in one way or another.

16 And actually the idea for the half-
17 million dollars for improvement to emergency
18 response really came out of our own work in the
19 local Mountain House Community. Dave Creswell, in
20 particular, heard many conversations where
21 residents expressed concern about the speed of
22 emergency services in their area.

23 And this was something that the
24 applicant introduced into the conversation. It
25 didn't come from Alameda County, but came from us,

1 that we would like to add a half-million dollars
2 to this agreement to have improvement to the
3 emergency services in this area of the county.
4 And it wasn't specifically about East Altamont; it
5 was about Mountain House residents.

6 And since we are not knowledgeable in
7 the area of these services we basically said we
8 want to commit half a million dollars to this
9 purpose, but, you know, we need you to make
10 proposals to us as to what the best uses for this
11 money was.

12 And that agreement with Alameda County,
13 that they would make proposals to us, and that we
14 would, you know, we would accept a reasonable
15 proposal, that actually was agreed to, you know,
16 on a handshake basis in the fall of 2001 long
17 before Mountain House Community Services District
18 asked for millions of dollars for a fire station.

19 And the cooperation agreement was
20 actually signed, I guess it's in September is the
21 date, of 2002, which is long before the
22 participation of the Tracy Fire Department in
23 these proceedings.

24 We're not knowledgeable in the fire
25 protection area, and so we were looking

1 understandably to Alameda County to make a good
2 proposal. And we, you know, different ideas have
3 been bootied about and I would say at this point,
4 Bill, we're still at the informal level of, you
5 know, -- I understand very well why the helicopter
6 concept benefits a number of districts and is in
7 keeping with what we had down here. And grass
8 fire is a major issue in the past.

9 But from the point of view of the
10 applicant, what we were wanting to do was to
11 provide a benefit to all of the residents out in
12 this extreme area of the county; not to improve
13 something for our own skins.

14 And I guess I'm going over the dates
15 here because I just want you to understand that
16 this was something that we entered into freely and
17 well in advance of any concerns being raised by
18 other agencies.

19 And so the language here, you know,
20 specifically, to just read, or just to synopsise,
21 you know, the county has the obligation to propose
22 a plan to improve emergency response in the
23 county's Mountain House area. And, you know, we
24 have to approve that not to be unreasonably
25 withheld.

1 And the intent here was that the plan,
2 that the budget would, you know, be sort of half
3 and half; half directly to the county, and half --
4 I just want to read this part -- either through
5 other agencies or to provide a direct benefit to
6 other agencies who respond to the Mountain House
7 area.

8 And you can see that the helicopter plan
9 benefits four other agencies that respond in this
10 area. But I think that maybe that's enough for
11 now.

12 CHIEF McCAMMON: We also felt that this
13 was a benefit to even greater than just the
14 eastern Alameda County area because of the lack of
15 aircraft availability in all of these four
16 counties. So we felt that it was the best use of
17 that funding.

18 HEARING OFFICER WILLIAMS: Thank you.

19 PRESIDING MEMBER KEESE: You referenced
20 in your filing that you have an arrangement with
21 the Tracy Fire Department?

22 CHIEF McCAMMON: I don't think --

23 PRESIDING MEMBER KEESE: Do you have a
24 mutual aid agreement?

25 CHIEF McCAMMON: We all have a -- there

1 is a mutual aid agreement that goes back --

2 PRESIDING MEMBER KEESE: Would you
3 characterize what arrangements there are between
4 Alameda and Tracy?

5 CHIEF McCAMMON: Currently today, and
6 maybe I can talk to you about the different types
7 of responses there are, --

8 PRESIDING MEMBER KEESE: Sure.

9 CHIEF McCAMMON: -- because I think
10 there is some confusion about first response
11 versus mutual aid.

12 There is an existing mutual aid
13 agreement that exists between Tracy and Alameda
14 County that goes back, I think, into the '70s.
15 And it was because there were two different
16 counties that were responding to calls together in
17 eastern Alameda County, western San Joaquin County
18 area. That is still in place today.

19 Both organizations are bound by a
20 statewide master mutual aid agreement that we're
21 all parties to.

22 But neither of those agreements
23 necessarily address first response, or the term
24 automatic aid. Where, in other words, you would
25 expect an adjoining jurisdiction to be the first

1 responder into a specific area, like the power
2 plant, if there was a medical call or some sort of
3 a fire call.

4 The way we handle our relationship with
5 Tracy today is that there are two areas where we
6 jointly respond together. One of those is on the
7 freeways. And the reason we do that, and we do
8 this with all jurisdictions that we respond with,
9 most people don't know where they are when they
10 get in an automobile accident on the freeway. So
11 they can call it in saying they're northbound when
12 actually they're southbound. They can say they're
13 at one exit and they're actually at a different
14 one.

15 So, what we always do with all the
16 jurisdictions we respond with, if we get a call
17 that's in one of those gray areas, we contact the
18 adjoining jurisdiction and ask them to send a
19 piece of equipment their direction and we send one
20 in our direction. So we respond with them today
21 on the freeways.

22 The other area where we have this type
23 of relationship is related to grass fires, because
24 again it's always been the case where you want to
25 get as many resources on these fires as possible.

1 So we jointly respond with the California
2 Department of Forestry, Tracy and ourselves, to
3 grass fires that occur out in this area.

4 And, again, somewhat of that is that the
5 county line is not painted on the ground. So
6 oftentimes you don't know where the fire starts.
7 And because of the high winds out here, the winds
8 blow to the east, so the fire may start in Alameda
9 County and end up in San Joaquin County, which
10 happens fairly frequently. So, we all respond to
11 those.

12 What we don't do today, if I lived in
13 the Mountain House Community and I have a specific
14 address or farmhouse that I live at, and I have a
15 medical problem in my house, Alameda County Fire
16 responds. We do not call the Tracy Fire
17 Department to respond to those calls.

18 So that's pretty much how our
19 interaction takes place today.

20 COMMISSIONER PERNELL: Hypothetically
21 for the project who would respond?

22 CHIEF McCAMMON: It's in Alameda County;
23 we will be the first response agency to the site.

24 COMMISSIONER PERNELL: And your response
25 time is?

1 CHIEF McCAMMON: It's ten minutes
2 depending, obviously, on traffic. It could be
3 longer at different times.

4 COMMISSIONER PERNELL: But now you're
5 going to have a helicopter?

6 CHIEF McCAMMON: We would have the
7 availability of a helicopter during fire season to
8 respond to different types of calls. I don't
9 think that would preclude a ground unit responding
10 to the call, but in terms of the availability of
11 transporting a patient to a trauma center or
12 something like that, that helicopter could be
13 used. And we routinely use helicopters in the
14 Altamont today. And if those helicopters aren't
15 available we would go to the fire fighting
16 helicopter.

17 But it also has rescue capabilities and
18 would be able to be used in a number of different
19 settings.

20 COMMISSIONER PERNELL: So you don't
21 anticipate calling on Tracy Fire Department to
22 handle any situation that might arise at the site?

23 CHIEF McCAMMON: No. We would call the
24 Tracy Fire Department for mutual aid if the
25 incident grew to a certain size. In other words,

1 our initial response to a reported fire or
2 hazardous material spill at that site would be 16
3 personnel. Because we have an automatic aid
4 agreement with the Lawrence Livermore Lab, so they
5 would respond an engine with us. They also
6 respond on the freeway with us, as well.

7 So we would respond our 16 personnel to
8 the site. If the incident grew beyond that, we
9 would call for resources from Alameda County; and
10 we would also make a request to Tracy to send
11 resources.

12 And to give you an example of that, the
13 Department of Water Resources pumping plant, which
14 is located in eastern Alameda County, we had a
15 fairly significant fire there. And we had, I
16 think, between 40 and 50 personnel on scene. And
17 all but about six of those personnel came from
18 Alameda County; and the other six came from Tracy.

19 So we believe that we can handle
20 incidents in Alameda County mostly with
21 firefighters from Alameda County.

22 MR. GARCIA: I have a question, Chief.
23 Could you explain to the Committee how Alameda
24 County would deal with the situation where,
25 because of traffic, you would be unable to get to

1 the facility? And let's say there was a fire
2 explosion at the gas compression station, and
3 maybe there was somebody that was trapped. How
4 would you deal with that?

5 CHIEF McCAMMON: First, I would tell you
6 that we can get here. Okay, --

7 MR. GARCIA: Let's say that --

8 CHIEF McCAMMON: We haven't found a time
9 that we couldn't respond --

10 MR. GARCIA: Let's say that you can't.
11 Let's say that you can't.

12 CHIEF McCAMMON: Well, if we can't,
13 which is an unrealistic assumption, then we would
14 call Tracy for mutual aid at that point.

15 But I will tell you that we can always
16 get here. We haven't found a time that we
17 couldn't respond over the Altamont. We go on the
18 shoulders; we take Old Altamont Road; there are a
19 number of response routes that we can use to get
20 out here. We've never had a case where we didn't
21 respond.

22 MR. GARCIA: And that response is longer
23 I would presume?

24 CHIEF McCAMMON: In certain times of the
25 day, conditions of the day, it would be longer,

1 yes.

2 MR. GARCIA: So here we are back at our
3 example where there's somebody that is trapped in
4 there and you have a longer response time. Would
5 that affect how you would ask for mutual aid?

6 CHIEF McCAMMON: It would be up to the
7 company officer responding to determine the
8 conditions, his response time and whether or not
9 he would make a request.

10 MR. GARCIA: Okay.

11 HEARING OFFICER WILLIAMS: Do you have -
12 - you have more remarks?

13 CHIEF McCAMMON: Well, I don't know -- I
14 have remarks specific to the comments that we've
15 presented, and I don't know if the Commission
16 wants to hear those or not, because I don't know
17 where you are in your deliberations related to
18 this.

19 I will tell you that Alameda County, not
20 just the fire department, has some very strong
21 feelings about the conditions. And I hope that
22 that came clear in our submittal to you. We don't
23 feel that it's legal to do that. And there are a
24 number of other operational issues that go forward
25 with that.

1 We also believe that we would be
2 providing a lower level of service by doing what
3 you're proposing.

4 PRESIDING MEMBER KEESE: I think it's
5 fair to say that the Committee recognizes the
6 legal impediments to what the Committee came up
7 with on its own without guidance from applicant or
8 staff. And we thank you and applicant for having
9 clarified our thinking on what it is that we could
10 do in this area.

11 We're taking the issue under submission.
12 We are pleased to see that there was something in
13 the agreement that dealt with the same subject.
14 We're asking for clarification.

15 I don't think you need to go into the
16 legal --

17 CHIEF McCAMMON: Okay.

18 PRESIDING MEMBER KEESE: -- impediments
19 to implementing what the Committee had in mind at
20 the start.

21 CHIEF McCAMMON: Okay. Is --

22 HEARING OFFICER WILLIAMS: We do have
23 your full comments now.

24 CHIEF McCAMMON: Okay, is there an
25 understanding about the response issues, as well?

1 Because I think that's one that we keep coming
2 back to, and I think we tried to, you know, kind
3 of walk you through some of those in the comments.
4 And hopefully that clarifies some of those points.

5 PRESIDING MEMBER KEESE: Yeah, it was --

6 CHIEF McCAMMON: And just one final
7 point on the half a million dollars. We, in terms
8 of the Alameda County Fire Department, are not
9 necessarily wed to that as the only option for all
10 of that money.

11 There may be some things we can do
12 specific to the Mountain House Community area, to
13 the individual homes or something that we just
14 haven't proposed yet. This was just kind of our
15 first blush at looking at that in terms of the
16 best utilization of the funds. But there may be
17 some other things we can do, and we're open to do
18 that.

19 One of the things that we would propose
20 initially is that there be automatic
21 defibrillators at the power plant. Because we've
22 found that those are very viable in private
23 companies now. People can be trained to use
24 those. We would provide that training.

25 We would provide CPR training to the

1 employees at the plant. So it would help their
2 capabilities in terms of if somebody did have a
3 heart attack and they wanted to provide, you know,
4 either CPR or use the defibrillator on those
5 people.

6 But those are small things, but they
7 would make big changes.

8 PRESIDING MEMBER KEESE: Thank you.

9 HEARING OFFICER WILLIAMS: Thank you,
10 sir. Staff.

11 MS. DeCARLO: Staff has no specific
12 comments on the comments that have been submitted,
13 however we would like to note that we were not
14 privy to the details of the agreement. And had we
15 known those details we certainly would have let
16 the Committee know.

17 PRESIDING MEMBER KEESE: Thank you.

18 HEARING OFFICER WILLIAMS: Thank you.
19 Mr. Sarvey.

20 MR. SARVEY: Yeah, first I'd like to
21 address this helicopter issue. The Chief here
22 stated the helicopter's for fighting grass fires.
23 Obviously that has nothing to do with responses to
24 East Altamont Energy Center. And the Committee
25 has appropriately determined that Tracy Fire will

1 be impacted by this facility mainly because
2 whether there's a mutual aid agreement or not
3 Tracy fire will always be the first one to that
4 site. They're much closer.

5 And that goes without saying. I don't
6 understand the applicant's reluctance. He said in
7 his briefs that Tracy Fire is required to be there
8 for the mutual response agreement; that under the
9 state emergency management system he's required to
10 respond. But then he doesn't want to pay for the
11 impact to Tracy Fire.

12 So I don't understand why the applicant
13 would not want a higher level service than will be
14 provided by Alameda County. Now, I'm not going to
15 dispute Alameda County's response times. I think
16 I've thoroughly explained under examination that
17 there is no way they can make it there in ten
18 minutes. It's 17 miles. It's ridiculous to
19 assume that a fire truck that goes 65 miles an
20 hour can go 17 miles in ten minutes. So I don't
21 think I need to beat that issue anything.

22 But essentially the issue is who's there
23 first; who's going to be providing the response;
24 and why would the applicant not want to protect
25 his workers and not protect his facility with a

1 superior response? I don't understand the
2 thinking here, and I think this has something to
3 do with the San Joaquin County's opposition to
4 this project. And I think this is a personal
5 thing that the applicant needs to let go. But
6 that's just my own feelings on that.

7 I'd like to know where the helicopter's
8 based. I believe he said Castro Valley. And what
9 the response time of that helicopter would be to
10 the East Altamont. And it's probably still going
11 to be longer than what Tracy Fire can provide.

12 So I think that, you know, that's an
13 issue that, you know, the helicopter is a totally
14 separate issue that's being brought in here to
15 cloud the waters, essentially. The key thing is
16 is Tracy Fire will be the first -- Tracy Fire will
17 be called upon. And Tracy Fire has an obligation
18 to defend Mountain House and its area with any
19 fire that does come there. So obviously they have
20 to go there for their own interests; nothing to do
21 with the mutual aid agreement.

22 And the Committee's correctly assessed
23 that Tracy Fire will be there first and will be
24 impacted by the facility, which is why they
25 provided the mitigation.

1 As far as the terminology related to
2 who's first responder and all that, I don't
3 believe Tracy Fire wants to take authority in this
4 area. I'm not going to speak for them because
5 they have their own representative here. But
6 Tracy Fire does not want to come in here and mop
7 up after these guys. They don't want to come in
8 here and take control of the situation, tell
9 Alameda County get out of here. Of course,
10 Alameda County is the agency that's charged with
11 responding to this area. But obviously Tracy Fire
12 will be there first every time.

13 So, the key issue is who's going to be
14 there first. And Tracy Fire is going to beat them
15 there.

16 So, I don't understand why we're
17 bringing in all these other issues related to
18 these conditions. And I don't see any problem
19 with any of these conditions. But the \$500,000 is
20 appropriate mitigation. That's what the
21 Committee's here to determine, who's affected; how
22 they get reimbursed. And I think the Committee,
23 you know, I'm probably beating a dead horse here.
24 I believe the Committee already believes what I'm
25 saying is true. So I'm just going to drop it at

1 that.

2 But I do have some personal issues with
3 the filings of Alameda County questioning my
4 credibility on statements that I made. And I
5 withdrew this from the proceedings because I felt
6 it wasn't relevant. I feel the relevant issue is
7 who will be there first and how will they be
8 mitigated for that responsibility to be there
9 first and do that.

10 I mean I don't want to waste the
11 Committee's time, but they're questioning my
12 credibility as an intervenor, and this filing
13 speaks for itself. Alameda County seems to think
14 that I made a statement that 30 percent of all the
15 Tracy Fire Department's calls are in Alameda
16 County. I did not say that.

17 I have a Tracy quarterly report here
18 that analyzes stations that will respond to the
19 facility, and 30 percent of their calls were to
20 Alameda County. And, in fact, during that
21 quarterly period when this was filed Alameda
22 County did not make any response to Tracy.

23 Furthermore, in this item we're
24 questioning here, it has a newspaper article here
25 where Tracy Fire did respond to a fire in the area

1 and they were there first. And they were mopping
2 up when Alameda Fire showed up. That's all that
3 needs to be said about this.

4 Thank you.

5 HEARING OFFICER WILLIAMS: Mr. Boyd, do
6 you have anything?

7 MR. BOYD: I'm really concerned that the
8 wrong agency is getting most of the money.
9 Obviously if Tracy Fire is the first to respond
10 they should be getting the majority of the
11 mitigation funds.

12 I don't really see it as an issue of
13 jurisdiction. I see it as a CEQA issue. It's a
14 CEQA issue, you're mitigating an impact, the
15 impact on Tracy Fire.

16 And basically that's where the majority
17 of the money should go, to the agency that's going
18 to be responding first.

19 Now, as far as this so-called agreement
20 that the applicant and the County of Alameda came
21 up with on September 2002, they clearly state in
22 this agreement that the county considers this a
23 project. Where's the CEQA analysis by the county?

24 Once again, here we have a situation
25 where we have an agreement that was approved in a

1 discretionary act of a public agency, in this case
2 the County of Alameda. I don't think it's legal
3 because there's no CEQA review.

4 And if you guys don't give any money to
5 the Tracy Fire I can guarantee you that we're
6 going to litigate this, this agreement, because we
7 don't believe it's legal. Because there's no CEQA
8 analysis. The identify it as a project. The
9 county, themselves, identify it as a project.

10 On the second page they talk about --

11 HEARING OFFICER WILLIAMS: We'll take
12 your word for it, Mr. Boyd.

13 MR. BOYD: -- their CEQA
14 responsibilities, what their responsibilities are.
15 On the first page, item C, it says, CEQA. That
16 they're waiting on the final, they're calling the
17 final staff assessment your CEQA review.

18 If that's the case why aren't you
19 adopting what the staff is recommending for
20 mitigation?

21 You can't have it both ways. It's
22 either the decision is the CEQA document, or the
23 staff review is the CEQA document. If the staff
24 review is the CEQA document, then you have to make
25 findings of overriding consideration. And you

1 haven't done that.

2 If it's not, then it's got to be the
3 decision. And I think it's the decision, because
4 that's what we filed the CEQA challenge on. Not
5 the staff report.

6 So this whole -- the basis of this,
7 they're basing their approval of this agreement on
8 a CEQA analysis that was never completed, either
9 by the County of Alameda or the CEC.

10 HEARING OFFICER WILLIAMS: Thank you.
11 Final word? Oh, public comment, excuse me.

12 CHIEF McCAMMON: Could I just make a --

13 HEARING OFFICER WILLIAMS: Yes.

14 CHIEF McCAMMON: -- couple of comments
15 based on what Mr. Sarvey said, because I'd like to
16 clarify this situation.

17 HEARING OFFICER WILLIAMS: Yes.

18 CHIEF McCAMMON: About the continual
19 reference to Tracy being the first responder.

20 HEARING OFFICER WILLIAMS: Yes.

21 CHIEF McCAMMON: That fact is
22 inaccurate. 911 calls that come into eastern
23 Alameda County are transmitted to the sheriff's
24 department in Alameda County, which is the public
25 safety answering point.

1 From that point the call is transferred
2 to the Lawrence Livermore National Laboratory
3 where Alameda County Fire Department resources are
4 dispatched. We are the first responder.

5 The only way Tracy would even know that
6 there was anything going on at that power plant is
7 if we contacted them.

8 So this isn't like a race where we throw
9 the ball up in the air and then everybody runs to
10 see who gets there first. When we require the
11 resources of Tracy Fire Department we contact
12 Tracy and we get those resources.

13 But there are numbers of calls that we
14 go on in east Alameda County Tracy doesn't even
15 know about, and they don't go on.

16 Referencing the numbers of calls and the
17 30 percent number, I've been very concerned about
18 this because this exhibit, and I'm sorry if it
19 wasn't submitted because I don't know your
20 process, but it purports in typed numbers at the
21 bottom that 30 percent of these calls were for
22 Alameda County. And that fact is inaccurate.

23 And we went to the extent that we
24 contacted the Stockton Fire Department that
25 dispatches all of the Tracy calls. And we got the

1 true numbers. And those true numbers are for only
2 the engines in the Tracy rural area that go into
3 Alameda County. And so that's the numbers that
4 you have as part of this. Turns out it was 1.6
5 percent of the calls for a six-month period of the
6 year.

7 And this other call over here is
8 actually for a nine-month thing that Mr. Sarvey
9 submitted, that talks of the 30 percent. What
10 that number includes, it includes automatic aid
11 into other parts of the Tracy district that are
12 outside of Alameda County. These are gross
13 numbers for the whole thing.

14 Because I talked to Battalion Chief
15 Fragoso about these numbers because I was
16 questioning them, as well. He wasn't familiar
17 with them. And so there was a lot of confusion
18 around this.

19 So we felt that you should have the
20 accurate information, and that was provided by the
21 Stockton Fire Department.

22 PRESIDING MEMBER KEESE: Thank you.

23 HEARING OFFICER WILLIAMS: Thank you.

24 PRESIDING MEMBER KEESE: Mr. Sensibaugh,
25 did you wish to speak to this issue?

1 Mr. Teed-Bose had also indicated this as
2 an issue, but -- hang on if you can for a few
3 minutes.

4 MR. SENSIBAUGH: That's not fair.

5 (Laughter.)

6 MR. SENSIBAUGH: Thank you again for
7 time to speak. First I want to say that I think
8 everybody in this room is living in the year 2002
9 or 2003 instead of 2007 or 2010.

10 The picture on the front page of this
11 report today isn't just a picture from a
12 helicopter; this is a picture, as we will see it,
13 of the Mountain House Community Services District
14 that will eventually be incorporated into a
15 community of 44,000 people.

16 By the year 2005/2007 when this plant
17 gets going there will be 10,000 residents out
18 there. The Mountain House community that
19 everybody's talking about are really those people
20 at Mountain House School and some of the people in
21 Alameda County and scattered people.

22 We are directly east of this plant. We
23 have a site on our master plan to build a fire
24 station that is under two miles driving distance
25 to this energy center. I don't care what anybody

1 in this room sits around and says about who's the
2 first responder and their legal ability to be that
3 person.

4 Somebody was right on over here when
5 they said that the first responder is the first
6 responder. And I guarantee you that will be the
7 Mountain House Community Services District.

8 If the State of California looks at this
9 picture from that helicopter I don't think anybody
10 cares whose contract says what. What you care
11 about is who's going to be first to that plant.

12 We have an agreement with Tracy Fire.
13 They are our provider. We pay them money to
14 provide a service for us. We may have that in the
15 future. We have every intention of keeping them.
16 That may not happen. Political things change.
17 Communities grow. Things change.

18 What I do know is the general manager
19 that will change, I'm not here to testify as a
20 fire expert. I'm here to tell you what's going to
21 happen that will change, the people will be there.
22 We will be the first responder.

23 And I came to the other hearing before
24 and indicated when I was told that they were going
25 to build a fire station for Alameda County. And I

1 don't know, to be honest with you, what the
2 condition is now. Maybe that's been traded for a
3 helicopter.

4 Okay, so there's still a fire station, I
5 guess. And what I said before was either build
6 that fire station closer to the energy center than
7 our fire station will be, or put that money in
8 Mountain House and build our fire station.

9 The money that you're talking about
10 should go to Tracy Fire or Alameda County really
11 ought to go to the first responder, and that's
12 going to be Mountain House.

13 That's all I have to say, thank you.

14 PRESIDING MEMBER KEESE: Chief, we'll
15 clarify. He probably means the ability to be a
16 first responder.

17 Okay, that is who had listed. Ms.
18 Sarvey, did you wish to speak to this issue?

19 MS. SARVEY: Can Chief Fragoso --

20 PRESIDING MEMBER KEESE: Chief Fragoso,
21 we're going --

22 MR. SENSIBAUGH: Tracy Fire is here,
23 too, to talk on our behalf.

24 MS. SARVEY: -- speak and I'll speak --

25 PRESIDING MEMBER KEESE: Happy to. I'm

1 sorry, I didn't have a card, I had seen you
2 earlier there, Chief.

3 CHIEF FRAGOSO: I'm Larry Fragoso --

4 PRESIDING MEMBER KEESE: It's here.

5 CHIEF FRAGOSO: Yeah, -- Tracy Fire
6 Department, 432 East 11th Street.

7 Most of the comments I'll concur with
8 most of the people who have been making them, even
9 Chief McCammon.

10 Our intent never has been to take on
11 Alameda County or supersede their ability to
12 provide services to the Alameda County area. As
13 he mentioned earlier, for the last 20 to 25 years
14 we have been providing mutual aid or an automatic
15 aid response area.

16 And the way that actually works and how
17 he says, depending on who receives the 911 call,
18 depending whether it comes from a land source or
19 whether it comes from a cell phone dictates on who
20 receives that call, and to whom they transfer it
21 to.

22 A lot of times because of the Altamont
23 area CHP receives it. It will either transfer it
24 to Alameda County or they'll transfer it to San
25 Joaquin County. And they'll do whomever they

1 believe is the jurisdictional response.

2 What we have done in the last 25 years
3 is because we're the nearest agency to the top of
4 the Mountain House on the westbound directions is
5 we would always respond with Alameda County coming
6 eastbound on the eastbound side. And they would
7 take care of anything up to the Grant Line area
8 eastbound, which is their jurisdiction anyway.
9 And we would go up to the top of Flynn Road at the
10 top of the Mountain House because we could provide
11 that service and then assist them in providing any
12 emergency provision, whatever was needed.

13 And then they would assume the
14 responsibility of the call and then we would
15 continue on.

16 And then the debacle about over these
17 situations came about and that strained our
18 relationship. It's even getting worse.

19 Over the last couple of months we have
20 terminated the mutual aid agreement. We're on
21 again under a verbal agreement between ourselves
22 and Chief McCammon to see if we can rectify this.
23 But let me assure you, Tracy Rural Fire Protection
24 District is paid by the community that it serves.
25 The people pay a specific fire protection fee.

1 We're not obligated by the state or anybody else
2 to provide fire protection to anybody other than
3 the people we serve. Anything we do we do it out
4 of a neighborly concern to help anybody outside
5 our jurisdiction or a neighbor on behalf, because
6 we are a fire protection service.

7 Even the State of California this year,
8 because they are unable to pay for strike teams,
9 and they want to be able to request mutual aid
10 only for major grass fires, is in jeopardy of
11 losing a lot of assistance from a lot of fire
12 agencies who are not going to be recompensated for
13 major fires throughout the state. And there's a
14 lot of jurisdictions who are wrestling with that
15 idea, whether they're going to provide those
16 assistance to the state or not. And it will
17 depend on whether the State Legislature comes up
18 with the revenue to be able to reimburse all these
19 agencies.

20 But no agency is capable of giving away
21 free services as long as we're paying salaries and
22 benefits to our employees.

23 And the only thing that we have been
24 requesting all along, that we be part of this
25 mitigation to continue our neighborly practices.

1 Now, we have made it clear that it is not our
2 intention to request any jurisdictional area or
3 responsibility from Alameda County; nor do we
4 profess to be any better than they are.

5 The only advantage that we have to
6 Alameda County is location. To be there. The
7 simple basis CPR tells the basic provider that the
8 brain begins to die within five minutes after the
9 heart has ceased. And the basic provider of any
10 EMS service is -- any EMT, any firefighter,
11 anybody who's taken basic first aid, is trained to
12 keep that brain alive until advanced life support
13 continues.

14 At the Mountain House Service station,
15 when it does go into effect, we'll have a
16 paramedic service along with the fire protection
17 service that we're going to be providing for that
18 area. And we're obligated to that community first
19 and foremost.

20 The only thing that we have always said
21 all along that if our services are not needed at
22 Calpine, that's fine. There's no problem, and we
23 don't take offense to that.

24 But we just wanted everybody to know
25 beforehand because the general public who sees a

1 fire station down the road do not understand the
2 politics of the jurisdictional responsibilities of
3 the different agencies. We are supposed to be
4 providing emergency services; they want the
5 nearest person to come and help them out.

6 Now, if you decide that that is not us,
7 that is fine, we have no problem with that. We do
8 have a responsibility to this community. We do
9 not have a responsibility to agreements, mutual
10 aid or automatic or otherwise.

11 We were in wishing that we were going to
12 be recipients to what your recommendations were
13 would have been to put into practice some type of
14 hazardous material equipment or education or
15 something that would help provide our department
16 with a better level of service to start addressing
17 those areas.

18 Everybody assumes that the emergencies
19 in the future are going to be confined to this
20 energy plant. Yet we're going to be transporting
21 chemicals to that plant for cooling purposes, and
22 we assume that we're never going to have any
23 transportation emergencies on the way to and fro.
24 And we're not going to have no releases in the air
25 where we're going to be releasing clouds of gases

1 over the community of Mountain House and the fire
2 department there isn't going to take emergency
3 actions to protect the citizens, whether it's
4 evacuations or whether to have them close their
5 facilities.

6 Whatever you choose to do this day, it's
7 on you. Okay? It's your decision. The only
8 thing I did want to address to you is we do thank
9 the CEC for at least recommending that we be
10 addressed in this issue. And, believe me, if we
11 do or had we been done, that thanks will continue
12 whether we're part of that solution or not. The
13 thought was appreciated.

14 But as long as you choose not for us to
15 be there, that's fine. It is their
16 responsibility. It is their jurisdiction. We
17 have no qualms over that.

18 But I do question Chief McCammon's
19 approach on the aircraft. I've been landing
20 emergency helicopters for years. And I'll tell
21 you right now, you cannot take a firefighting
22 helicopter and convert it over to medical
23 transport overnight. You cannot, by law,
24 transport emergency medical patients without
25 flight nurses on board that can handle emergency

1 situations. They have to be specifically
2 designed, staffed and trained for that specific
3 reason. They're two breeds of cats.

4 So, my main concern is what we call it,
5 work safety, public safety and not wild land.
6 That is CDF's jurisdiction. We assist them
7 basically the way we assist Alameda County with
8 whatever we can. It's not our expertise. We
9 don't profess to be wild land firefighters. We
10 help the best we can until added resources come,
11 as we do Alameda County in their jurisdiction.

12 And as far as that, I'd like to thank
13 you guys for your time. And I got no more
14 arguments over this one.

15 PRESIDING MEMBER KEESE: Thank you,
16 Chief.

17 COMMISSIONER PERNELL: Thank you, Chief.

18 MS. SARVEY: Susan Sarvey, Clean Air for
19 Citizens and Legal Equality. The first problem I
20 have with this is Alameda County Fire, since
21 you -- I'm going to call it a brief, those papers
22 with their position on what they felt about the
23 City of Tracy and our fire response -- I think
24 it's grossly unfair that they are being allowed
25 virtually intervenor status and getting to write

1 whatever they want. And Tracy Fire was not even
2 notified that they were being allowed to write a
3 brief, and that they could respond and defend
4 themselves.

5 Now, I understand that he is fully
6 committed to his belief system. What I ask you is
7 that if you have a heart attack at East Altamont
8 Energy Center and you're laying on the floor and
9 your brain is cooking, do you want Mountain House
10 to come right away? Or do you want to pray that
11 that that helicopter is not in one of those other
12 four counties, not on a fire in some other place?
13 And then have them call and tell him, well, I
14 don't think we're going to get there another ten
15 minutes, can you call somebody and have them go
16 out starting from now.

17 I think when you have your heart attack
18 you want somebody to come immediately directly to
19 you and save your brain so you're not a vegetable.
20 I think that's very important for all of us.
21 Quality of life is much more important to me than
22 quantity. I don't want to be alive if I'm a
23 vegetable.

24 My second issue is the tone in that
25 brief, in my opinion, makes it very difficult to

1 have a positive mutual aid response. When we
2 started this proceeding Tracy was identified as
3 being the first responder.

4 Now, all of a sudden, it's like we're
5 the clown brigade in that brief. It's like we
6 couldn't do anything for Alameda County to help
7 them out. We're just not capable; we don't know
8 how.

9 I have been working extensively with the
10 fire department. They have already got a hazmat
11 team put together that has been going to the
12 training. We're working very hard on several
13 different fronts to try to get a hazmat trailer.
14 And we are not that water-fire department. We are
15 not criticizing their fire department, and for
16 them to attack us professionally was really
17 unpleasant.

18 The next thing I would like to address
19 is I was so pleased that the Commission understood
20 that Tracy was being put in such a vulnerable
21 position. And that they did need to be
22 compensated. Throughout these hearings and the
23 ones in the TPP, it's been my understanding that
24 either the aqueous or anhydrous ammonia that would
25 be going to these plants would be coming from

1 Stockton.

2 That is not going on Alameda County
3 ground. If they're going to have a spill it's
4 going to be on San Joaquin County ground. My fire
5 department will be responding to their mess. Why
6 isn't my fire department going to be compensated
7 for that? I don't think that's right.

8 All I am asking for is that my manpower,
9 my equipment, my fuel costs be covered. I'm
10 asking for you to help my fire department be able
11 to protect me to the best of its ability. I am
12 going to end up with three power plants in my
13 backyard. And all of their chemicals are coming
14 from up here. They're not coming from Alameda
15 County. My fire department has to deal with that.

16 And I'm really concerned that you are
17 not clear when he is discussing Mountain House
18 Community. He is not talking about Eric Teed-Bose
19 and Mr. Sensibaugh's community. He is talking
20 about some rural people who live in the Altamont
21 Hills. And they have a school.

22 And I'd also like to address the idea
23 that if, you know, today we have a spare-the-air
24 day here. We're going to have a spare-the-air
25 day, this plant is probably going to be running.

1 We have extremely high asthma rates in this area.

2 You --

3 HEARING OFFICER WILLIAMS: Ms. Sarvey --

4 MS. SARVEY: I'm almost done. I'm

5 almost done.

6 HEARING OFFICER WILLIAMS: I know you're

7 going to have comments on air --

8 MS. SARVEY: Well, just let me finish

9 this and I'll be done, okay?

10 Those kids have asthma. Their pollution

11 is going to be blowing over those kids. Schools

12 do not keep their kids inside playing in a gym on

13 a spare-the-air day, because they can't afford to

14 run the air conditioning. They send them out

15 there in 100 degree heat, breathing that

16 particulate and everything else they're --

17 HEARING OFFICER WILLIAMS: Ms. Sarvey,

18 I'm going to have to cut you off --

19 CHIEF McCAMMON: -- and that kid is

20 going to need an ambulance from Tracy. Not his

21 helicopter. That kid dies, you get sued. That

22 parent is not going to understand your patty-cake

23 in here and passing the buck. Please defend my

24 community.

25 HEARING OFFICER WILLIAMS: Thank you.

1 Chief, I'm still unclear on one thing. If there's
2 an emergency, for example, at the proposed
3 facility and you get the call. And for whatever
4 reason you decide that you need mutual aid.

5 Now, as I understand it, on the highways
6 and the grass fire, traditionally there's been
7 this dual response. And that's per an agreement
8 between you and Tracy. I guess it's just sort of
9 a gentleman's type agreement, it's not
10 memorialized anywhere.

11 CHIEF McCAMMON: Correct.

12 HEARING OFFICER WILLIAMS: Now, so if
13 there's an emergency at the proposed plant and you
14 decide for whatever reason that it's best to call
15 in for mutual aid, and the closest station to the
16 accident would be Mountain House, you would then
17 therefore initiate a call to Mountain House, is
18 that correct?

19 CHIEF McCAMMON: We would initiate a
20 call to the Tracy Fire Department for resources.

21 HEARING OFFICER WILLIAMS: Right.

22 CHIEF McCAMMON: And then we would get
23 assistance from them, just as when the tire fire
24 happened out here?

25 HEARING OFFICER WILLIAMS: Right.

1 CHIEF McCAMMON: That was a large
2 incident. We had quite a bit of resources from
3 Alameda County at that fire. In fact, our
4 incident management team ran the fire for the
5 first probably 18 hours.

6 HEARING OFFICER WILLIAMS: Right.

7 CHIEF McCAMMON: We've had biomass plant
8 fires out here where our bulldozer worked out here
9 for two or three days, as well as our resources,
10 as part of the initial response. So it works both
11 ways.

12 HEARING OFFICER WILLIAMS: Right. So,
13 my point is in initiating that call to another
14 jurisdiction, that then allows -- that gives them
15 the legal permission to move into your
16 jurisdiction?

17 CHIEF McCAMMON: That's correct. And it
18 works both ways.

19 HEARING OFFICER WILLIAMS: I see.

20 CHIEF McCAMMON: And just a comment
21 about the helicopter and the flight nurse.
22 Currently today the East Bay Regional Parks
23 helicopter transports and they have just a
24 paramedic on it. They have paramedic firefighters
25 who volunteer to work on that, and it provides

1 transport.

2 The flight nurse of the kind Chief
3 Fragoso was talking about is if you want to do it
4 for money. In other words, if we were to get into
5 the business and want to charge for transport,
6 that rises you to a different level. But we
7 wouldn't be doing that. We wouldn't charge.

8 HEARING OFFICER WILLIAMS: Okay.

9 PRESIDING MEMBER KEESE: Thank you.

10 HEARING OFFICER WILLIAMS: Thank you.

11 COMMISSIONER PERNELL: Chief, one final
12 question. On the gentleman's agreement if Tracy
13 is assisting, is there any compensation? And that
14 question goes both ways. If you're assisting
15 Tracy is there any compensation?

16 CHIEF McCAMMON: No. There is no
17 compensation.

18 COMMISSIONER PERNELL: Okay. Thank you.

19 HEARING OFFICER WILLIAMS: Okay, we're
20 going to -- thank you, Chief, --

21 CHIEF McCAMMON: Thank you.

22 HEARING OFFICER WILLIAMS: -- spending
23 some time with us today. We appreciate it.

24 CHIEF McCAMMON: Thank you for being
25 flexible.

1 HEARING OFFICER WILLIAMS: Okay, then
2 we'll take a lunch break now. And then after
3 lunch we'll take -- we'll take 45 minutes for
4 lunch and then proceed with the last item, air.

5 (Whereupon, at 12:55 p.m., the
6 conference was adjourned, to reconvene
7 at 1:25 p.m., this same day.)

8 --o0o--

1 AFTERNOON SESSION

2 1:25 p.m.

3 HEARING OFFICER WILLIAMS: I guess maybe
4 before we get to air it might be a good time to
5 take up the admission of that additional document.
6 I think everybody's probably had a chance to look
7 at it. And we want to get that admitted and close
8 the record fully.

9 So, when Mr. Sarvey comes back -- I
10 guess Mr. Boyd has left -- we'll just do that
11 briefly. Do you have assembled your air folks,
12 everybody you need?

13 MR. WHEATLAND: Yes, we're all set.

14 HEARING OFFICER WILLIAMS: Okay. Mr.
15 Sarvey, do you have any objection to the 4A-1, the
16 cooperation agreement between applicant and
17 Alameda County?

18 MR. SARVEY: I haven't had too much of a
19 chance to review it, so are we going to go through
20 it? Is that the picture, or are we --

21 HEARING OFFICER WILLIAMS: Well, it's
22 the Committee's preference to close the record
23 out. We just left it open --

24 MR. SARVEY: I would object to its
25 inclusion.

1 HEARING OFFICER WILLIAMS: Okay. Noted.
2 Staff?

3 MS. DeCARLO: No objections to allowing
4 the document in just for the sole purpose of
5 identifying that this is the agreement entered
6 into between East Altamont Energy Center.

7 HEARING OFFICER WILLIAMS: Okay.

8 MR. WHEATLAND: And just for the record,
9 although it wasn't admitted into the -- previously
10 into the record, a copy of this document was
11 docketed and served on Mr. Sarvey on September
12 30th of 2002.

13 HEARING OFFICER WILLIAMS: I guess as
14 part of something else, was it?

15 MR. WHEATLAND: Yeah, we docketed the
16 document --

17 HEARING OFFICER WILLIAMS: Oh, okay.

18 MR. WHEATLAND: -- and served it on the
19 parties on September 30, 2002.

20 HEARING OFFICER WILLIAMS: Okay. Great.
21 So, the Committee will admit 4A-1. And the record
22 is closed.

23 So, with that, applicant, if you could
24 begin your air quality comments.

25 MR. HARRIS: Thank you, Mr. Willliams.

1 This is Jeff Harris. I will be handling the air
2 issues for the applicant -- Gregg Wheatland.

3 Tom Andrews from Sierra Research is here
4 to my right. Tom is sitting in for Gary
5 Rubenstein who has, a long time ago, earned a
6 vacation, but finally took it. So, Tom is here to
7 help me with some of the technical issues.

8 I think what I want to do is report
9 back, there's generally some good news to report.
10 The PMPD at page 146 asked the parties to sit down
11 and talk about the differences on AQC1-5. That
12 meeting did occur and there was really substantial
13 progress that I can report and staff can confirm
14 on a lot of issues.

15 Did you have a question, Major?

16 HEARING OFFICER WILLIAMS: Yeah, I'm
17 glad you're reading my face. I just wanted to ask
18 the Chairman, he's been sort of prefacing our
19 topics with introductory remarks. And I neglected
20 to ask him if he --

21 PRESIDING MEMBER KEESE: No, I think
22 we'll let this one go. You've focused on the
23 right point. I think we do want to ask you
24 whether we still have disagreement on NPQ, I
25 believe it is.

1 MR. HARRIS: Right, and that's precisely
2 the filter I was going to apply to our comments.
3 You have our written comments that were filed and
4 served yesterday. I'm only going to focus on the
5 important issues that the Committee wants to hear
6 about. Just because I don't talk about an issue
7 doesn't mean we don't care about it. Obviously,
8 you have our written comments and there are some
9 places where I think the record is not clear.

10 For example, on page 146 it's suggested
11 we accepted staff's findings regarding SO2. But,
12 again, in our written comments we clarified that
13 we didn't accept that.

14 So, let me move into I think one of the
15 major issues that are of concern, and those are
16 the construction mitigation conditions, the AQC1-
17 5. As I said, I think we've done a good job
18 carrying out the Committee's directive, meeting
19 with staff; putting together, I think, consensus
20 language for most of those conditions. And where
21 we don't have consensus I want to very clearly
22 delineate for you where the areas of disagreement
23 remain.

24 So the good news is that AQC1 and AQC2,
25 I believe we're in complete agreement with staff.

1 The conditions that you find on page 5 of our
2 prefiled document are, I think, exactly the same
3 as staff's. And so as to those two conditions I
4 think we're in very good shape.

5 AQC3, there has been some agreement and
6 there continues to be substantial disagreement in
7 certain areas. And I'll just march through the
8 condition if you'd like. And if you have our
9 testimony in front of you, our document in front
10 of you, that's probably the best. I'm on page 6
11 of our filing of yesterday.

12 AQ-SC-3, subsection (a), my
13 understanding is there's agreement between staff
14 and applicant on that condition. The revised
15 language is intended to recognize that watering
16 will be done every four hours or until the area is
17 sufficiently wet to comply with dust mitigation
18 objectives of AQ-SC-4.

19 The issue there basically is that four
20 hours was the number that was picked out, seemed
21 to make sense. If watering less frequently, you
22 know, five hours or six hours, is sufficient to
23 keep the dust down, then that's what would happen.
24 If it needs to be more frequent than four hours,
25 then that's what would happen. And I think that's

1 staff's understanding of that condition, as well.

2 The language is a little rough, in my
3 view, but I think we all understand that intent.
4 If staff disagrees, we'll hear from them on that
5 issue. But I think complete agreement as to
6 subsection (a).

7 The issues where we start to diverge
8 from staff are on page 7 of our document starting
9 with subsection (n) as in Nancy. There's
10 disagreement here as to the 15 mile-an-hour wind
11 condition that staff would like to limit.

12 I believe the first changes in
13 subsection (n) are agreed by everybody. And in
14 that section we've added in excess of the visible
15 emissions limits specified in condition AQ-SC-4.
16 AQ-SC-4 has the actual standard that we're going
17 to be trying to meet in terms of keeping the dust
18 down.

19 PRESIDING MEMBER KEESE: Don't forget
20 the word "can". Is the word "can" accepted?

21 MR. HARRIS: The word "can" has actually
22 been deleted from our language, as well.

23 PRESIDING MEMBER KEESE: Is that
24 accepted by staff?

25 MR. HARRIS: I believe so, yes. So I

1 think everything up to this point we're in
2 agreement in. I think that's fine.

3 The deviance, if you will, from staff
4 starts with the second set of underlying language
5 that starts in, more than one legitimate dust
6 complaints have been made to the AQC and/or the
7 CPM regarding fugitive dust until -- and you can
8 read the language -- until water dust suppression
9 or other measures have been applied to reduce dust
10 within the limits of AQ-SC-4.

11 The idea there basically is that the
12 standard in AQ-SC-4 is what we're trying to meet
13 here. And so if the winds are above 15 miles an
14 hour, and there's a complaint lodged, the idea
15 would be that the work would stop and you would go
16 out and apply dust suppressants, including water,
17 until you could get that dust cloud controlled to
18 the point where you are meeting the standards
19 again in AQ-SC-4.

20 The divergence we have with staff here
21 is that we believe with sufficient watering and
22 other dust suppression measures winds can be 15
23 miles an hour or greater and still not have a
24 plume issue. It's just an issue of managing the
25 dust through dust suppression methods.

1 And so our change to that condition
2 basically is to allow the work to be reinitiated
3 regardless of the wind speed so long as you're
4 meeting the standard that's set forth in condition
5 4 of the construction conditions.

6 PRESIDING MEMBER KEESE: You're
7 restricted to complaint -- remind me, how would it
8 be monitored? I mean is either the AQCM or the
9 CPM monitoring wind?

10 MR. HARRIS: Well, that's a good
11 question. I don't know if they're going to be out
12 there with a wind speed indicator.

13 MR. ANDREWS: They would be monitoring
14 for the dust in compliance with --

15 PRESIDING MEMBER KEESE: Would they be
16 the one who makes the complaint?

17 MR. HARRIS: They could be the one who
18 made the complaint. I think more specifically --
19 if they thought we weren't meeting the standard
20 they obviously can go to the construction manager
21 and say, you know, water more, do what you need to
22 do.

23 The legitimate complaint language really
24 derives actually out of a noise condition. The
25 concern is that you may have activities going on

1 in farming fields all around the project that are
2 creating dust issues. The dust issue would be
3 totally unrelated to the project. And the CPM, I
4 think, would have the authority at that point to
5 take a look at the complaint and say, yes, it's
6 coming from the site, we need to do more; or no,
7 it's coming from some other operations not within
8 the applicant's control.

9 And so legitimate is intended, I think,
10 to connote the discretion --

11 PRESIDING MEMBER KEESE: You're not
12 suggesting that the CPM can't tell you; has to
13 wait for a complaint?

14 MR. HARRIS: No, we're not suggesting
15 that.

16 PRESIDING MEMBER KEESE: Okay.

17 MR. HARRIS: The CPM, on their own
18 accord, is going to be responsible for -- I guess
19 maybe it's the AQCCM, too many acronyms -- the air
20 quality dust guru is going to be responsible for
21 making sure that we're meeting the conditions in
22 AQ-SC-4.

23 PRESIDING MEMBER KEESE: In their
24 opinion, that's covered there, is that what you're
25 telling me?

1 MR. HARRIS: Correct.

2 PRESIDING MEMBER KEESE: In number 4.

3 MR. HARRIS: Correct, yes. They have
4 independent authority. I don't think they have to
5 launch a complaint and determine that their own
6 complaint is legitimate. But it's covered both
7 places.

8 And again, I think the thing that's most
9 important to us in that subcondition is that
10 everything is tied back to the standards in AQ-SC-
11 4. And so we want to have some certainty out
12 there when we're doing our construction
13 activities. We know how much is too much, and how
14 to do the watering. And so that's why you see in
15 both of our additions to the language about AQ-SC-
16 4.

17 The next area of disagreement with staff
18 relates to subsections (p) (q) and (r). These are
19 all sections that related to soot filter issues.
20 The language that you have before you on page 7 is
21 our suggested changes to (p), (q) and (r). It
22 doesn't represent the staff's position. So I want
23 to note that for you in the record. We're now
24 moving into the applicant's suggested language.

25 At the most basic level here there are

1 certain engines that have to be certified as being
2 acceptable. And those are the ones that have to
3 have the soot filter requirements. There's a
4 federal provision that we talked about in our
5 brief, basically anti-tampering. And the theory
6 behind the anti-tampering provisions are to
7 prevent people from literally tampering with soot
8 control devices so that they're no longer
9 effective.

10 And so our concern with the strict legal
11 issue there about federal preemption is EPA has
12 basically said, here are our requirements; you
13 can't literally tamper with those things.

14 We're concerned that the conditions, as
15 written, could be construed as requiring the
16 applicant to take certain actions that would be
17 contrary to those anti-tampering provisions.

18 And so we're not at all in disagreement
19 with the basic idea behind the mitigation, but
20 there are other issues to be concerned about.

21 From an operations perspective, one
22 thing the soot filters can do is create excessive
23 back pressure in the engine. That would cause
24 problems both with the efficiency of the
25 equipment; and also potentially cause problems

1 with damage to the engine, which would require
2 additional maintenance. And frankly, some of this
3 equipment is so very specialized that it doesn't
4 have this soot filter available to it. There may
5 be three or four pieces in the entire country for
6 certain boring techniques and what-have-you.

7 So, the changes we propose to (p), (q)
8 and (r) are all intended to make sure number one,
9 that we don't run afoul of federal law; and number
10 two, to give the CPM discretion to essentially
11 rule that there isn't a soot filter available, or
12 it is causing damage to an engine, or it is
13 causing excessive back pressure, or that the
14 engine will be onsite for so few hours that
15 basically there would be no impacts associated
16 with that temporary construction activity.

17 The additions you can see, turning now
18 to specific language on (p). In the second line
19 it talks about 1996 CARB and EPA certified
20 standards. This is basically also referred to as
21 tier 1 engines.

22 The change we've suggested is to
23 basically give us the ability to avoid running
24 afoul of the anti-tampering laws. And that
25 language says, unless certified by the onsite

1 AQCMM that the certified engine is not available
2 for particular equipment, so if there's a --

3 PRESIDING MEMBER KEESE: I have to ask
4 you what available means.

5 MR. HARRIS: Well, it's going to be a
6 case we have to make it to the CPM. Wouldn't be
7 available if it doesn't exist, obviously. If
8 there are only --

9 PRESIDING MEMBER KEESE: If it's in L.A.
10 is it available?

11 MR. HARRIS: It may be available and we
12 may have to wait. If there's only one and we need
13 it for a protracted period, we may have to
14 contract for that.

15 If it's a relatively short-term
16 operation and there are not available soot filters
17 for that, the CPM would have the discretion to
18 determine that they aren't available.

19 Basically what we're asking for the CPM
20 to do is to apply I think standard industry
21 practices. You know, if you were building
22 something next to this that wasn't an Energy
23 Commission facility, what would that construction
24 manager be required to do.

25 And your CBOs tend to be trained

1 professionals who have a lot of experience in
2 these kind of activities. And they're going to
3 know industry standards, what's applicable, and
4 also what's available. So that is why we've given
5 them the discretion to make the determination on
6 availability.

7 And I do want to emphasize again, for
8 some of these operations they may only be a matter
9 of hours. You may have a specialized piece of
10 equipment that won't run for a day. But on those
11 larger pieces of equipment, the longer they're
12 needed the more likely they are to be available
13 and to have these kind of technologies available.
14 We're just asking for the CPM to have the ability
15 to make that judgment.

16 As top sub (q), we have gone farther in
17 that basically to add some additional
18 clarification to determine if it's not practical
19 to use these soot filters. And we've added
20 essentially two particular subsections there,
21 which actually goes to the issue of availability.

22 Subsection (1) says that there are no
23 soot filters that have been certified by either
24 CARB or EPA for the engine in question. And that
25 definitely would be unavailable. It simply

1 doesn't exist.

2 And then the second subsection,
3 construction equipment is intended to be used
4 onsite for ten days or less. And, again, that
5 represents a very temporary impact over a 24-month
6 construction period. It's a de minimis amount of
7 time. So given the temporary nature of that use,
8 again the CPM would have discretion and we're
9 asking you to rely on the CPM and the CBO's
10 expertise in making those determinations.

11 Continuing on with the revisions to the
12 language, we basically ask that we be given some
13 relief. And it talked about back pressure and
14 talked about maintenance problems and talked about
15 other issues that may be affected by the soot
16 filters.

17 And so in subsections (a), (b), (c) and
18 (d) we're laid out some of those specific
19 conditions under which the CPM could exercise a
20 judgment to say essentially we don't think the
21 soot filters are available or practical. Those go
22 to basic issues of maintenance, back pressure
23 under subsection (a).

24 Subsection (b), if the filter will cause
25 damage to the engine. Sub (c) it's if the soot

1 filter could potentially cause worker problems,
2 worker safety issues.

3 And then sub (d) is a more general
4 category, talking about detrimentally, serious
5 detrimental cause there. It's basically again to
6 recognize the industry has some standards and the
7 CBO and the CPM are going to have available to
8 them information. And we want them to have the
9 discretion to say this particular piece of
10 equipment, it's needed or it's not needed.

11 So those are the major changes that
12 we've suggested --

13 PRESIDING MEMBER KEESE: Okay, I would
14 ask if, recognizing item (n) above is basically
15 going to be real time; in other words there will
16 be dust and somebody's going to say there's dust,
17 you've got to shut down. Why would we suggest
18 that if you're going to make a soot filter change
19 you're going to wait ten days?

20 MR. HARRIS: I'm not sure I follow your
21 question, I'm sorry.

22 PRESIDING MEMBER KEESE: This says
23 you're going to notify him within ten days.

24 MR. HARRIS: Of the soot filter change?
25 Distinguish from (n) above. (n) above is a

1 condition that really relates to the ambient work
2 conditions.

3 PRESIDING MEMBER KEESE: Right.

4 MR. HARRIS: It's tied to the wind
5 blowing.

6 PRESIDING MEMBER KEESE: But you're
7 going to have an AQCM that you can talk to,
8 that's going to be active.

9 MR. HARRIS: Correct.

10 PRESIDING MEMBER KEESE: On a real-time
11 basis sort of.

12 Wouldn't, if you want to get rid of a
13 soot filter, wouldn't you be able to talk to the
14 AQCM and say, we've got a problem here, we're
15 going to take it off? I mean, why would you wait
16 ten days?

17 There must be some determinative process
18 that's going to decide that you're going to take
19 it off.

20 MR. HARRIS: Let me let Tom Andrews from
21 Sierra respond.

22 PRESIDING MEMBER KEESE: Sure.

23 MR. ANDREWS: I think the question is
24 regarding QII where it quotes the construction
25 equipment is intended to be onsite for ten days or

1 less, is that --

2 PRESIDING MEMBER KEESE: No, my question
3 was the last major sentence: The use of a soot
4 filter may be terminated immediately if one of the
5 following conditions exist, provided you let the
6 CPM know within ten days.

7 So it looks like you can decide it's
8 excessively reducing normal ability of the
9 equipment and shut it down, or you can decide that
10 it's causing or is reasonably expected to cause
11 significant engine damage and shut it down and
12 wait ten days and then let the CPM know about it.

13 MR. ANDREWS: I think the action for
14 termination is immediate, meaning the engine just,
15 for example, the engine just caught on fire
16 because the soot filter's on it. So, please go
17 ahead and take off the soot filter now. And we --

18 PRESIDING MEMBER KEESE: Wait ten days
19 to tell him? I mean why are you going to wait ten
20 days? I'm just -- explain to me why you're going
21 to wait ten days.

22 MR. ANDREWS: I think we're making a
23 distinction between notification between the AQCMM
24 and the CPM. I think the immediate notification
25 would go to the mitigation manager.

1 PRESIDING MEMBER KEESE: Okay. So this
2 follows the paragraph above, that you get relief
3 from the AQCMM, or you notify the CPM within ten
4 days?

5 MR. HARRIS: I think we're working with
6 the AQCMM on a real-time basis to determine --

7 PRESIDING MEMBER KEESE: Before you take
8 it off?

9 MR. HARRIS: -- whether there's a
10 problem. Before we take it off. Or after the
11 fire, whatever that caused the fire in the filter.
12 That person is onsite; they're responsible for the
13 implementations of all of these conditions. The
14 notification here that follows is to the CPM who
15 won't be on site; they'll be in Sacramento.

16 If that --

17 PRESIDING MEMBER KEESE: So you wouldn't
18 have a problem with after the use of a soot filter
19 may be terminated immediately upon -- comma, upon
20 approval of the AQCMM if one of the following? Is
21 that what I'm hearing?

22 MR. HARRIS: No. We would find that
23 acceptable.

24 PRESIDING MEMBER KEESE: Okay. I'm not
25 sure staff will, but we'll see. I just didn't

1 understand why you'd wait ten days to let him
2 know.

3 MR. HARRIS: You've thought of a nuance
4 that didn't occur to me, so I appreciate the
5 questions.

6 Okay. The soot filter conditions that,
7 the PQ conditions that we've talked about now,
8 basically we're restating our preference that the
9 Committee include conditions identical to those
10 that were in the Russell City and Tracy Peaker
11 cases.

12 The conditions you have before you are
13 not identical to those other two projects. And so
14 you have marked up off of your language. Our
15 first preference I think would be to go to
16 language that's exactly like what we have in
17 Russell City, and exactly what you have put into
18 the Tracy program.

19 Failing that, we would like you to
20 consider the modifications that we've just gone
21 through. The issue there is basically we think
22 that there's a great advantage to us, as someone
23 who operates more than one facility, number one,
24 both Russell City and this facility, to have a set
25 of conditions that are the same, consistently

1 applied across those two projects.

2 I think it's also, on an equity basis,
3 important that regardless of who the applicant is,
4 ourselves, Tracy, that we have the opportunity to
5 see a consistent set of conditions out of the
6 staff. So that is our strong preference. But
7 failing that, obviously we'd like you to consider
8 the changes we just put before you.

9 PRESIDING MEMBER KEESE: Thank you.

10 MR. HARRIS: AQ-SC-4 on the middle of
11 page 8, there's one change there that did not get
12 picked up. We had a version control issue with
13 this. I talked to staff counsel about this,
14 informed them. But I need to walk you all through
15 that change and provide you with a rationale for
16 that.

17 So, again, I'm on AQ-SC-4 in the middle
18 of page 8. And the changes start in the second
19 line. It says, the project site fenced property
20 boundary. We would suggest to do the following:
21 We would delete the word fenced from the existing
22 text; and then add at the end of the sentence
23 after the word boundary, or the adjacent lands
24 owned by the applicant.

25 So, again, deleting the word fenced from

1 the text that's there, and then adding at the end
2 of the sentence, or the adjacent lands owned by
3 the applicant.

4 Let me explain the reason for that
5 change. As you know, we've got control of a much
6 larger site than just the power plant site. The
7 area for the power plant will be fenced,
8 obviously, for the operations. That area is much
9 smaller than the total project site.

10 In addition, we have control of the
11 property -- the Franco property to the east.
12 There's a residence on that property now, but
13 that'll be removed before we begin construction.
14 And so essentially what you have is a fenced area
15 being a subset of our project site, which is also
16 a subset of the other lands we control, which will
17 be unoccupied.

18 And so this change is intended basically
19 to recognize that the fenced area is much smaller
20 than the area that will be under our control. And
21 I'll wait to hear from staff whether they have any
22 concerns about that language. And I apologize;
23 that was language given to me by Gary Rubenstein
24 in an email before he left, and it just didn't get
25 picked up. And thankfully Tom noticed that today,

1 so.

2 We'll move on now to AQ-SC-5. This is
3 the condition that the Committee added to deal
4 with the issues related to the air quality AQMA
5 that's been entered into between the applicant and
6 the San Joaquin District.

7 Just a little background on that AQMA.
8 I think it's important to note that there's a
9 couple things going on there. Number one, there's
10 a safety factor built into that. We take a look
11 at what we thought the possible emissions would be
12 and came up with a number of 33.4 tons. And just
13 to start off we doubled that to 66.8. And so when
14 you see the number 66.8, keep in mind that that
15 number absolutely incorporates a twofold safety
16 margin in terms of the tons to be generated here.

17 Another important principle here, I
18 think, from the applicant's perspective is we do
19 have an agreement in place, and that agreement has
20 been put into the record. It's exhibit 2C-C in, I
21 guess, Charlie. That document, it has been
22 negotiated; it's in place.

23 And one of the fundamental principles
24 here from our perspective is that we think that
25 document ought to be the document that guides

1 compliance. That ought to be the basis for the
2 decision on how to guide compliance. It ought not
3 be subject to change, not be subject to
4 recalculation.

5 One of the concerns we have about the
6 language change is that we think that those create
7 a bit of an inequity because it does allow for
8 some recalculations. That recalculation is, I
9 think, contrary to both the Commission's decision
10 in the Otay Mesa case and the Palomar cases. And
11 so we're concerned about that. And I'll get to
12 the specific language that I'm talking about on
13 that in a minute. These are just introductory
14 comments.

15 Let me then turn now to the specific
16 language of AQ-SC-5. We've proposed changes
17 there, and the changes really start on page 10 of
18 our document, at the very top of page 10. We
19 struck out the word project owner and added the
20 language to read now, the program shall be
21 designed to provide emission reductions locally
22 equivalent to 66.8 tons of NOx.

23 The word change here is significant.
24 We've stricken out the word project owner because
25 what we'd putting in place here is a program.

1 It's not a project owner initiated program; it's
2 not one that we will be in charge of operating.
3 It's actually going to be a program that will be
4 coordinated with the district and the CPM.

5 And so the program that we're putting in
6 place is designed to provide the equivalent of
7 66.8 tons of NOx mitigation. Again, that number
8 is a number that's been doubled. The original
9 estimates are the 33.4.

10 The next changes are in subsection (1),
11 and again this goes to the point about making sure
12 that the agreement that's in place is reflected in
13 the decision, and that agreement guides the
14 compliance for the project.

15 We've added the sentence that the AQMP,
16 which is the air quality mitigation plan, dated
17 July 19, 2002 and referenced as exhibit 2C-C in
18 this proceeding, is approved by the Commission. I
19 think it's important that we have your approval.
20 And shall constitute the AQMP approved by the
21 Commission for the purposes of paragraph three of
22 that document.

23 Again, this is to provide the certainty,
24 I think, that you provided in Otay Mesa and also
25 in the Palomar case. We have had concerns about

1 people wanting to revisit issues that are outside
2 the record. This document is in the record. It's
3 decided. We think it ought to be the basis for
4 your decision, and that's why the addition to (1).

5 The strike-out language in provision 2
6 is something I alluded to earlier. This language
7 would basically take this agreement and make it
8 essentially a document that wouldn't be binding.
9 It would basically allow for the recalculation of
10 the mitigation, lookbacks post-certification, and
11 we think, as the applicant, and as the district,
12 we're going to want the certainty of knowing where
13 we're going forward.

14 This provision, as with provision 3,
15 both basically ask the Commission to revisit
16 issues post-certification. We think that's both
17 inconsistent with your precedent in other cases,
18 and bad policy for reasons I can talk about a
19 little later. So we've stricken -- removed
20 paragraphs two and three from the text.

21 Paragraph four, it's just a recognition
22 that not all of these mitigation plans that we're
23 proposing are going to be available as we start
24 commercial operation. I'll talk in a minute in
25 response to some of the staff's comments about the

1 specific plans that are in place, but there are
2 ongoing programs in the San Joaquin Valley
3 District related to engine, ag engines and heavy
4 engines. Those are basically we call them ongoing
5 programs.

6 And the desire here is to have, to the
7 extent possible, the applicant shall insure the
8 full mitigation is completed prior to start of
9 commercial operation.

10 We think the district is going to have
11 to go through some competitive processes to bid
12 these programs. We want these programs all to be
13 cost effective. And that usually involves the
14 public process. There will be biddings and awards
15 on those.

16 We can't control that process. We can
17 control, obviously, getting the funds into the
18 district's hands so they can get started. The
19 language here allows us to begin the operations.

20 PRESIDING MEMBER KEESE: A point that
21 has been raised is whether we're talking about a
22 one-time 66.8, or rather are we talking about 66.8
23 for the life of the project.

24 MR. HARRIS: And I would like to get to
25 that issue in response to staff's comments.

1 PRESIDING MEMBER KEESE: Okay, --

2 MR. HARRIS: I think it's important.

3 PRESIDING MEMBER KEESE: -- but if we're
4 talking about anything other than a one-time
5 event, one-day, full mitigation will occur over
6 the life of the project.

7 MR. HARRIS: Correct.

8 PRESIDING MEMBER KEESE: And to suggest
9 the full mitigation is done prior to the plant
10 would suggest that 30 years worth of mitigation
11 has already taken place.

12 MR. HARRIS: Correct. And I will go
13 into a little more detail in response to that
14 issue, in response to some of the staff's
15 comments.

16 PRESIDING MEMBER KEESE: Thank you.

17 MR. HARRIS: The changes under provision
18 5 are simply intended to conform the condition to
19 the air quality mitigation agreement with the
20 district. The district agreement does provide for
21 the first payment to be made, you know, 30 days
22 after the physical delivery of the first
23 combustion turbine for the project site.

24 I think this language is in our
25 agreement; I think it's also in the other

1 agreement with another applicant. So that change
2 is strictly to conform our condition to the
3 agreement that has been entered into.

4 Let me go through the rest of this, I
5 think fairly quickly, because it's redundant now.
6 We're into the verifications on page 11.

7 Again, the changes to subsection (1) are
8 intended to once again reiterate that the July 19,
9 2002 document is the plan. The plan has been
10 developed. You're working off the plan. And
11 that's exhibit 2C-C. Those changes are basically
12 designed to reflect that.

13 The minor change in the third bullet
14 there under verification one, just change the word
15 condition to decision, again to reflect that the
16 Commission has made a decision on this issue.

17 The changes in the second bullet under
18 the heading, the report shall contain the
19 following, I believe are strictly meant to reflect
20 the required emissions. And I'll get in a little
21 bit to the issue of what this agreement was all
22 about in a second.

23 And then under three, again, the
24 payments are intended to line up with the AQMA.
25 So again, conforming changes there.

1 I think it's important to keep in mind,
2 you know, there's been a lot of focus on, you
3 know, how many tons of this, how many tons of
4 that. This agreement that we developed was put
5 into place really to deal with the calculations of
6 a proper mitigation fee. That's the origin of the
7 number and it's actually, at the end of the day,
8 that tons number is the one that translates into
9 the amount of the mitigation fee.

10 I want to talk about some specific
11 issues that staff has raised. Under subsection
12 (d) where they talk about for the life of the
13 project, and this goes to answer Commissioner
14 Keese's questions about, you know, one time versus
15 over the life of the project.

16 I think a fundamental principle that
17 gets lost here, and one that I think we need to
18 focus on for a moment, is the fact that we've
19 entered into a mitigation agreement here, an AQMA,
20 that in my view is not strictly required by the
21 law. What do I mean by that?

22 We have a project here that is located
23 essentially on the border between two air
24 districts. What does the law say about that? The
25 law says simply this: You're required to meet the

1 requirements of the district in which you are
2 physically located. That's the Bay Area Air
3 Quality Management District.

4 I think it would have been legally
5 defensible for East Altamont to say essentially to
6 San Joaquin, you know, we're in the Bay Area
7 District, go away. And have that decision upheld
8 by a court.

9 But two things. Number one, that's not
10 the way Calpine does business. We are located
11 where we are located. We realize that we're going
12 to be a member of this community for more than 30
13 years. And secondly, I think it's pretty clear to
14 us that the Committee wanted us to try to work
15 through a solution.

16 So, that's important background. I
17 think it shouldn't be lost at all, though, on
18 everybody. Because what that means essentially is
19 that the entire AQMA, in my view, is not
20 mitigation. It's an agreement that has been
21 struck to allow the project to go forward.

22 I think it's the right thing to do, but
23 I think it's important that we all recognize that
24 there is not, there's not a legal authority out
25 there that says a power plant located on the

1 border has to comply with two sets of districts
2 and enter into two agreements. If there had been
3 such an authority somebody would have brought it
4 to our attention. So keep that as background in
5 judging the sufficiency of the AQMA.

6 I think at the most basic level we could
7 have taken that legally defensible position. We
8 didn't. Having said that, then, you know, what
9 did we do?

10 We did apply some very conservative
11 factors. As I've talked about already we
12 essentially added a multiplier of two. The
13 estimated number of tons was 33.4; we've doubled
14 that. Why did we double it? To provide a safety
15 margin. There's not a regulation that tells us to
16 double it. We just thought it was the right thing
17 to do to avoid challenges down the road. That
18 simple.

19 We also assumed \$15,000 per ton for
20 mitigation. And that's how you end up with the
21 number \$15,000 per ton times the number of tons
22 doubled is a second level of conservatism there.
23 So you have first level being doubling the number
24 of tons; the second level assuming a price I think
25 is quite high.

1 And the third thing we did was focus on
2 the northern part of the San Joaquin District, in
3 order of preference, City of Tracy, and then
4 northern part of the district. As you know, the
5 San Joaquin District is a very large district. We
6 heard the local community and we understood the
7 Commission's interest in providing those benefits
8 as closely as we could to the City of Tracy.

9 I want to talk a little bit about the
10 specific programs that are in the AQMA. Again,
11 this is exhibit 2C-C, the July 19, 2002 filing.

12 UNIDENTIFIED SPEAKER: Do you have
13 copies --

14 MR. HARRIS: I don't have extra copies
15 of this. You do? Good, thank you. Good staff
16 work, Bob.

17 (Pause.)

18 PRESIDING MEMBER KEESE: That's
19 something other than you had?

20 MR. HARRIS: Correct. That's not what I
21 had in mind actually, but Mr. Sarvey has passed
22 out a document that's relevant but it wasn't the
23 one I was talking about, so this is what happens
24 when you get into alphabet soup. He's passed out
25 the AQMA, the agreement, which is the agreement

1 between the district and the applicant. I was
2 referring to the AQMP, the actual plan, itself.

3 So, it wasn't that good of staff work,
4 Bob. Thanks for trying.

5 (Laughter.)

6 MR. SARVEY: I'll try harder next time.

7 MR. HARRIS: The document is identified
8 in the record as 2C-C; it is the filing by Sierra
9 Research dated July 19. And the only reason I
10 wanted to go to that document is that there is a
11 table 1 on page 2 of that document which lays out
12 all the various mitigation measures that were
13 considered, proposed by staff, proposed by
14 applicant and proposed by the district.

15 And I wanted to go through those real
16 quickly for this purpose. And the purpose is
17 simply this, is that the way I read staff's
18 comments under their comments sub (d) for the life
19 of the project, they're suggesting that projects
20 that don't have a 30-year life may not be eligible
21 for funding under the AQMA. And I think that's
22 incorrect.

23 I think it's incorrect for a lot of
24 reasons. At the most basic level, as I've said, I
25 think the AQMA, itself, is not required, strictly

1 required by law, so that to find a deficiency in
2 that program based upon a number of tons, I think,
3 is just legally indefensible.

4 This additional, I don't want to use the
5 word mitigation because it's not, it's an
6 additional enhancement, if you will, to the
7 project. It's something that's been negotiated.
8 So to try to hold it to a standard like staff is
9 suggesting that it is mitigation, I think is
10 absolutely the incorrect standard here. And what
11 we've provided, I think, is a community benefit
12 program. And we provided a program that's really
13 designed around existing programs that are
14 operating within the district.

15 Here's the reason I wanted to talk about
16 table 1. The staff has proposed essentially eight
17 different mitigation proposals. If you apply the
18 staff's criteria in their comments, seven out of
19 the eight proposals by staff fail.

20 And what I mean by that, those are
21 mitigation proposals that are very limited term.
22 Staff talks about natural gas transit buses. They
23 talk about natural gas refueling capacity. That's
24 staff 1 and 2. Staff 3 and 4 are school bus
25 replacements. Staff 5 is solar panels. Staff 6

1 is parking lot paving. Staff 7 is the ultra-low
2 diesel for Mountain House construction.

3 Those seven projects, in my view, if you
4 read them -- maybe I'm not reading this the way
5 staff intended it, but if you strictly read
6 staff's section D criteria, I don't think seven of
7 the eight staff proposals qualify under that. So
8 I think it's the wrong standard. They are things
9 that are not that effective.

10 The longer term programs that the
11 applicant has proposed are things like the wood
12 stove replacement and the fireplace inserts.
13 Again, those are things that I think will have a
14 longer life term; and also have a higher cost
15 effectiveness. We're talking \$6000 to \$8000 a ton
16 for those.

17 The air district has proposed heavy
18 engine replacements and ag engine replacements
19 which have a higher number, \$17,000 to \$20,000.
20 The point of all this -- several points of all
21 this are simple.

22 Number one, I think if you applied
23 staff's criteria here, most of staff's mitigation
24 would not quality for their own criteria they've
25 just tried to establish.

1 Second, we have a whole menu of options
2 that are going to be before the air district,
3 subject to CPM approval. And the idea here is to
4 give flexibility. I think the idea is essentially
5 to allow the people who know the air district and
6 know the existing programs, know how the funds are
7 going to be used, the maximum flexibility to go
8 forward with those programs.

9 Each one of these programs is going to
10 have to be cost effective as we move forward. So,
11 you know, I think the message in all that is that
12 the Committee has made the right decision; they
13 provided sufficient flexibility.

14 And Intervenor Sarvey has suggested that
15 we go out and buy offsets on page 5 of his
16 document that would basically be, you know, \$2
17 million worth of offsets, assuming \$30,000 for
18 NOx, for 66.7 tons.

19 Remember the factor of two in what we've
20 said. If you divide this number down to what
21 we've all agreed, it would be 33.4. And multiply
22 it by the same \$30,000 that Mr. Sarvey has set
23 forth, we're talking about a mitigation fee of
24 just over a million dollars, which is less than
25 what's been proposed in the AQMA.

1 And so I think what the Committee has
2 done is the right thing. They've recognized,
3 number one, that the AQMA is not required under
4 any strict legal interpretation. They want it,
5 you want it, we want to do it. We think it's the
6 right thing to do. And you've put together a plan
7 that provides the ultimate flexibility to move
8 forward.

9 PRESIDING MEMBER KEESE: Would you --
10 you made a reference to the approval by the
11 project manager, I believe, to the CPM to the San
12 Joaquin plan?

13 MR. HARRIS: Right.

14 PRESIDING MEMBER KEESE: And I note in
15 your filing a grave concern that staff has
16 indicated other tendencies which would drive the
17 cost up.

18 Are you -- staff, on the other hand, I
19 believe, sort of felt that they had no control
20 over the mitigation measures.

21 Would you give me your side of that
22 debate?

23 MR. HARRIS: I think we deal with that
24 through verification; I'm on page 11 of our
25 document. Through the verification number 1. And

1 ironically it's the language that hasn't been
2 changed there, at the end of verification number
3 1.

4 What we've provided is that anytime
5 during the implementation of the plan, the plan
6 that you're approving, the district may request to
7 the CPM, your representative, approval of
8 expenditures for measures not included in the
9 approved plan. Such request has to be accompanied
10 by, and there's a laundry list of things that have
11 to be -- that should be considered in whether you
12 change the plan.

13 And so, on the one hand we've asked that
14 you adopt a decision that certifies the plan.
15 We've also tried to provide for that plan to be
16 amended if the San Joaquin Valley and the City of
17 Tracy come up with -- the air district and the
18 City of Tracy come up with a plan where they say
19 we think this is the best thing you can do for
20 local air quality, and it's not on the list that I
21 just went through, -- you can actually distribute
22 that, if you would, that's -- he's going to
23 distribute a copy of the table 1 from the plan.

24 What the condition says now essentially
25 is there's enough flexibility here such that if we

1 all decide that something we haven't even thought
2 about now is better, then this plan could be
3 amended and the dollars could be used to go
4 towards that.

5 Again, the cost effective criteria will
6 come into play. Everything that is spent out of
7 this mitigation fund is intended to be cost
8 effective. And that's part of the decision for
9 the district and the locals to say, well, we think
10 it's better to be used for the ag pumps than it is
11 to be used for, you know, pick one, anything else
12 off there, the paving of the driveways.

13 PRESIDING MEMBER KEESE: You suggested
14 that they would be sending it out for bids, or
15 option. I don't remember your exact term. But, I
16 would assume that we're talking about the most
17 cost effective.

18 MR. HARRIS: Yeah, let me respond, and
19 then --

20 PRESIDING MEMBER KEESE: Is that a major
21 criteria?

22 MR. HARRIS: Absolutely. I ought to let
23 the district give you their view on how they
24 select programs, but our intent is to provide the
25 most cost effective, you know, dollars. We

1 provide money, and if you can get reductions at
2 6000 a ton, those are the ones you obviously go
3 for. If there's ones at 30,000 a ton, those are
4 probably lower priority.

5 PRESIDING MEMBER KEESE: And while not
6 in front of us now, as I recall the district's
7 history over the last 10 or 12 years has been that
8 the average cost has been under \$10,000.

9 MR. SWANEY: Correct.

10 PRESIDING MEMBER KEESE: Probably in the
11 \$7000 range.

12 HEARING OFFICER WILLIAMS: Sir, could
13 you identify yourself for the record?

14 MR. SWANEY: I'm Jim Swaney with the San
15 Joaquin Valley Air District.

16 HEARING OFFICER WILLIAMS: I think it
17 might be appropriate, the air district, of course,
18 is an intervenor, but I think due to the unique
19 circumstances here, that they be allowed to talk
20 second.

21 MS. DeCARLO: Staff has no objection.

22 HEARING OFFICER WILLIAMS: So we'll --

23 PRESIDING MEMBER KEESE: Are you done,
24 then? Is applicant done or do you want to mix
25 this --

1 HEARING OFFICER WILLIAMS: I don't mean
2 to rush you through your presentation. I just
3 want to point out that when you've completed then
4 we'll pick up with San Joaquin.

5 MR. HARRIS: Okay. Maybe, if we could,
6 ask San Joaquin to explain a little bit about what
7 they consider to be cost effective for the
8 implementation of the measures.

9 I do have a few more comments on staff's
10 filing, but I think it would be useful to hear a
11 little bit more about how San Joaquin sees the
12 cost effectiveness.

13 HEARING OFFICER WILLIAMS: That's fine.

14 MR. SWANEY: How we envision the
15 implementation of this plan is we do have a lot of
16 programs already in place for paying out money to
17 get reductions. And we have a long history of
18 those. So we know what has worked in the past.

19 We envision doing the same thing with
20 this. We put -- say that we have money available
21 for certain programs. We look at what people
22 apply for that money and then we make a decision
23 what is the most cost effective. In other words,
24 what will get us the most reductions for the given
25 amount of money. And that's how we envision

1 paying out this fee.

2 HEARING OFFICER WILLIAMS: Now, what is
3 your understanding of the target of tons? The
4 applicant has made some suggestion that we ought
5 to be looking at 33 rather than 66.

6 MR. SWANEY: Based on our history our
7 expectation is we will get more than a 66.8 tons.
8 Simply because we feel that \$15,000 per ton, which
9 is what the fee was based on, is a conservative
10 number. And so we feel we should get more than
11 that.

12 HEARING OFFICER WILLIAMS: So you're
13 looking at 66, 67 tons --

14 MR. SWANEY: Yes.

15 HEARING OFFICER WILLIAMS: -- this
16 figure that's embodied in the agreement?

17 MR. SWANEY: Yes.

18 HEARING OFFICER WILLIAMS: And that's a
19 figure that is your focus?

20 MR. SWANEY: Well, our focus is to get
21 as much as we can. We'll have the amount of money
22 that's been paid to us to give back out to
23 projects to fund reductions. And we will try to
24 get as many reductions as we can.

25 Our target, of course, is the 66.8, but

1 we're very confident that we will get more than
2 that.

3 HEARING OFFICER WILLIAMS: Okay, thank
4 you.

5 MR. HARRIS: And I guess I would add at
6 this point, too, that if the program ends up being
7 more effective and we get more than 66, we're not
8 asking for something back.

9 (Laughter.)

10 MR. HARRIS: We don't get money back,
11 and we don't get any ERCs. Although we thought
12 about asking for it, but we didn't want to press
13 our luck on that.

14 (Laughter.)

15 MR. HARRIS: But anyway, it is our
16 expectation, as well, that we will do much better
17 than what we've suggested here because of the
18 conservative assumptions.

19 Let me go quickly through the staff's
20 items, if I could. And I'll just take the rest of
21 these in order and I'll be very brief. And I'll
22 answer any questions you might have.

23 So, starting on page 8 of the staff's
24 filing, subsection (a), about the methodology that
25 the staff has applied here. I think this is a

1 case where the staff is, they're arguing basically
2 for things that the Commission has already
3 decided.

4 We believe the Committee has already
5 correctly decided this issue on page 152 of your
6 CEQA analysis. I think the salient thing here is
7 that the CARB study is not the same thing as the
8 staff's methodology. Those are two different
9 things.

10 You have a study; we acknowledge that
11 study exists. And then you have the staff
12 extrapolating a methodology out of that study.
13 That may or may not be a good idea, but the point
14 is that the study and the methodology are
15 different.

16 The study has been peer-reviewed and
17 published, but it's not a rule. The staff
18 methodology, on the other hand, is just that; it's
19 a methodology. It hasn't been peer-reviewed
20 outside the Energy Commission. It certainly has
21 not been subject to a rulemaking. And I think
22 that's the important point.

23 If this is the kind of thing that ought
24 to become a LORS, then there ought to be a
25 rulemaking; everybody ought to participate.

1 Otherwise I think what you have here is a
2 situation where the applicants are subject to
3 standards that are not really standards. They're
4 methodologies created by staff. And so I think
5 the Committee has correctly ruled on that issue.

6 Moving to staff's point (b) on page 9
7 about the 2.5 mitigation. I think, once again,
8 the Committee got it correctly and the staff is
9 re-arguing that point. And so I won't go any
10 further than to say that I think the staff is
11 incorrect, and the Committee has it right.

12 On subpoint (c) on that same page, page
13 9, one of the things that's bothered me
14 continually through this process has been this, I
15 think an artificial distinction between LORS
16 compliance and CEQA. I've looked at Mr. Boyd's
17 filing. I'll talk about it since he's gone.

18 A lot of discussions about CEQA. I
19 think there has been an artificial divide created
20 there. There is not a huge divide between the
21 LORS compliance and CEQA. And let me explain what
22 I mean by that.

23 The two things are not mutually
24 exclusive. The LORS, themselves, are created
25 pursuant to a rulemaking process. That rulemaking

1 process has an environmental document. The LORS
2 are, by definition, compliant with CEQA.

3 I think one of the things the revised
4 decision does is it puts to an end that myth.
5 These are radically different concepts.

6 One specific thing that I wanted to
7 point out is that staff relies on appendix G of
8 the CEQA guidelines to talk about potential
9 significant impacts. And appendix G is a CEQA
10 tool. And actually cited on page 143 of the
11 revised decision, there are a set of bullets, five
12 bullets, that come from the CEQA analysis from
13 appendix G.

14 What is not in that revised decision is
15 the introductory phrase to those CEQA bullets.
16 And what that introductory says from appendix G --
17 I have a copy of this actually -- what I'm handing
18 around is just a three-page document. CEQA
19 appendix G, all the first page is intended to show
20 you that it is from appendix G.

21 If you turn to the second page of that
22 handout, which is labeled page number 4, because
23 it is, in fact, the fourth page of appendix G.
24 I've crossed out the top, and on the bottom there
25 is the beginning introductory statement. Then on

1 the third page is page 5. Those lay out the five
2 bullets that are in page 143 of the Commission's
3 decision.

4 What I want to focus is on that second
5 page of the handout, the page labeled 4, right
6 below the crossed-out language. This is what an
7 agency is supposed to consider in looking at air
8 quality impacts.

9 It says, where available the
10 significance criteria established by the
11 applicable air quality management or air pollution
12 control district may be relied upon to make the
13 following determinations.

14 So, in the most fundamental of CEQA
15 documents this appendix G checklist, the
16 introductory phrase for air quality says quite
17 clearly that reliance on the local air district
18 significance criteria is fundamental.

19 And I think that goes to the point about
20 this myth, this false divide between LORS and CEQA
21 compliance. And I just wanted to point that out
22 because in subsection (c) of the staff's comments
23 on page 9, once again, the very last sentence,
24 they're suggesting that it was in the CEQA
25 analysis performed by the Bay Area District. I

1 think that's just simply legally incorrect.

2 Moving quickly through. We talked about
3 (d) already. (e) is the feasibility, (e) on page
4 10 again, ammonia slip. The Committee, I think,
5 has correctly decided 10 parts per million ammonia
6 slip with 2.0 ppm NOx. We made that determination
7 based on a record that says this area is ammonia
8 rich, so there'd be no benefits from the lower
9 number.

10 And I think it's also important to note
11 that the BACT determinations like these are
12 district-specific. And that staff cites to the
13 South Coast District where ammonia is a regulated
14 pollutant, it's not a regulated pollutant in the
15 Bay Area District.

16 The staff also cites to some smaller
17 projects that I think are not applicable or
18 comparable to this project. So, once again, the
19 Committee got it right on page 150 LORS analysis
20 number 8 where you talk about ammonia slip. And
21 so we would just like you to reiterate that
22 decision.

23 And then finally staff (f), I just want
24 to again make clear that staff has put forth, I
25 think, what are the consensus agreement items up

1 through (n), (p) and (q) on through which we
2 talked about. So anyway, I didn't want you to
3 just try to pick up staff's recommendations as
4 being -- if you're going to cut-and-paste, cut-
5 and-paste from ours. That's my point.

6 (Laughter.)

7 MR. HARRIS: I think ours reflect both
8 the consensus agreement and our advocacy position.
9 So I wanted to highlight that so everybody, you're
10 careful when you look at those documents to
11 realize there are differences.

12 PRESIDING MEMBER KEESE: Thank you.

13 MR. HARRIS: I think that's it for us.

14 HEARING OFFICER WILLIAMS: Mr. Swaney,
15 do you have further comments?

16 MR. SWANEY: I really don't have any
17 further comments, but I did want to take this
18 opportunity to thank the Committee for all of your
19 work in dealing with this contentious issue. It
20 really is unprecedented in California in dealing
21 with a neighboring air district filing as
22 intervenor status and taking as active a role as
23 we have in these proceedings. So, thank you for
24 that.

25 HEARING OFFICER WILLIAMS: Thank you.

1 COMMISSIONER PERNELL: Thank you.

2 PRESIDING MEMBER KEESE: Thank you.

3 HEARING OFFICER WILLIAMS: Staff.

4 MS. DeCARLO: Yes, Matt Layton and Tuan
5 Ngo are here today to respond to comments made by
6 the applicant on the RPMPD.

7 MR. NGO: Good afternoon. Staff also,
8 in term of the agreement with the applicant, first
9 of all we want to talk about the construction
10 condition that we have. We did have a meeting to
11 discuss some changes. And we are agree, we are in
12 agree with the applicant to change the condition
13 AQ-SC-1 through AQ-SC-2 according to their
14 submittal.

15 On AQ-SC-3 we are in agreement with
16 sub -- I mean with bullet (a). On condition AQ-
17 SC-3 (n), we have some discussion, but the bottom
18 part where the one where it say, the bottom part
19 where it say something about a legitimate
20 complaint have been made. That have not been
21 discussed at the meeting nor staff have any
22 knowledge until today. So we are not -- so I
23 believe that by inserting those wording into
24 condition AQ-SC-3(n) it will make the condition
25 not enforceable.

1 PRESIDING MEMBER KEESE: Let me just
2 ask, do you have a problem with the principle,
3 that if the dust is reduced to limits set forth in
4 AQ-SC-4 they can continue?

5 MR. NGO: Yes.

6 PRESIDING MEMBER KEESE: So that --

7 MR. NGO: No, we okay with that.

8 PRESIDING MEMBER KEESE: -- in
9 principle, you're okay with that.

10 MR. NGO: We okay with that.

11 PRESIDING MEMBER KEESE: You object to
12 the complaint --

13 MR. NGO: Right.

14 PRESIDING MEMBER KEESE: -- portion.

15 MR. LAYTON: The language we put forward
16 in ours is identical to what we discussed. Again,
17 we had never discussed this complaint. It showed
18 up today. It's the first time we've seen it,
19 heard it.

20 PRESIDING MEMBER KEESE: Okay, in your
21 (n) --

22 MR. LAYTON: We would agree to our (n).

23 PRESIDING MEMBER KEESE: Your (n)
24 suggests that when the wind exceeds 15 miles per
25 hour and it causes fugitive dust, it shall cease

1 if the winds are above 15 miles per hour. And
2 they had suggested until it's mitigated -- until
3 it's suppressed in compliance with standard AQ-SC-
4 4.

5 MR. LAYTON: They suggested complaints.

6 PRESIDING MEMBER KEESE: Right, and I'm
7 trying to separate. You object to the complaint?

8 MR. LAYTON: Well, we're not aware of it
9 and I don't think it's a very --

10 PRESIDING MEMBER KEESE: All right,
11 you're objecting to the issue of the complaint.
12 But --

13 MR. LAYTON: It's not very interactive;
14 I don't think it would really work that fast.

15 PRESIDING MEMBER KEESE: Right, but
16 would you object to what their idea, which is that
17 if it's suppressed they can go forward? Until
18 suppressed?

19 MR. LAYTON: I think that's what our
20 condition allows.

21 PRESIDING MEMBER KEESE: Okay, so we
22 really don't have a disagreement on that part of
23 it, then?

24 MR. LAYTON: Yeah, --

25 PRESIDING MEMBER KEESE: Okay, I --

1 MR. LAYTON: -- and our end --

2 PRESIDING MEMBER KEESE: -- I'm trying
3 to understand, we got a lot of work to do between
4 now and next Wednesday. I'm trying to understand
5 exactly where the parties are coming from. So
6 your objection is to the complaint, and you
7 believe the second part of it is covered. Okay.
8 We understand it.

9 Let's look at (p).

10 MR. NGO: Okay, we going to (p). What
11 AQ-SC-(p) the wording that's inserted, staff
12 believe that the AQCM, which is the air quality
13 management -- air quality construction manager, is
14 not qualified to make that judgment in term of
15 whether the equipment will be -- to certify that
16 the control equipment is not available for that
17 engine.

18 And then go on to the (q), the reason
19 why I mentioned the (q) because under (q) in our
20 version of the condition we are not require soot
21 filter if the engine manufacturer certify that a
22 soot filter is not available on the engine. And
23 we allow for such provision already.

24 And we did not want to put that
25 responsibility for the air quality construction

1 manager.

2 PRESIDING MEMBER KEESE: So you're
3 placing it on the equipment manufacturer?

4 MR. NGO: Yes. What we really want to
5 do here, the reason why the wording in AQ-SC-3-(p)
6 and (q) --

7 PRESIDING MEMBER KEESE: You're actually
8 giving it to either, the certification is either
9 by the engine manufacturer or by the AQCM.

10 MR. NGO: That's right.

11 PRESIDING MEMBER KEESE: Then it's not
12 practical.

13 MR. NGO: And the reason behind it
14 because we want somebody to actually sit down and
15 plan it through to see what kind of engine that
16 they use, so that we can prevent what the emission
17 come up, rather than doing something to patch up
18 later when we find out that there was problem with
19 the engine and try to correct it from there.

20 PRESIDING MEMBER KEESE: So, let me just
21 raise one simple issue, which was applicant's
22 suggestion for ten days or less. You're not
23 disagreeing with that expressly; you're saying
24 that if the AQCM says it's only going to be there
25 for five or ten days, you don't have to do it.

1 That might be a reasonable decision by the AQCM,
2 but you'd prefer not to list that as one of the
3 things that falls in the impractical area.

4 MR. NGO: Well, anything like that, if
5 any equipment like that that going to be employ at
6 the time where construction occur, we want to know
7 in advance, because we want to know whether these
8 alternative.

9 PRESIDING MEMBER KEESE: Okay, and
10 you --

11 MR. NGO: Again, the whole thing is a
12 planning effort, is not really something that we
13 try to go in there and make correction at the time
14 it --

15 PRESIDING MEMBER KEESE: Applicant is
16 asking for a certainty by giving a list, which I
17 gather you've just seen today.

18 MR. HARRIS: Can I correct one thing on
19 that.

20 PRESIDING MEMBER KEESE: Okay.

21 MR. HARRIS: There's a May 23rd email
22 from Gary Rubenstein to Mike Ringer, Matt Layton
23 and to Tuan that has this exact language in it.
24 So, they're not seeing it for the first time
25 today. They saw it on the 23rd.

1 MR. LAYTON: Yes, we received (p), (q)
2 and (r) several times, yes.

3 PRESIDING MEMBER KEESE: Okay.

4 MR. LAYTON: But we still think our
5 condition with the fallback of not --

6 PRESIDING MEMBER KEESE: Is general
7 enough that it meets their --

8 MR. LAYTON: One of the concerns we have
9 is government does move slowly, and this language
10 here that the applicant's proposing requires
11 certified engines and soot filters from CARB and
12 EPA.

13 We don't think that the public should
14 have to wait for certification. If a soot filter
15 will work on a piece of equipment, we want it on
16 there. If it won't work, it's not practical and
17 then it shouldn't be on there. We don't want to
18 wait for certified soot filters and engines.

19 PRESIDING MEMBER KEESE: You want to
20 give the discretion to the AQCM?

21 MR. LAYTON: Yes.

22 PRESIDING MEMBER KEESE: But you're
23 willing to accept the manufacturer's statement,
24 also.

25 MR. LAYTON: Yes.

1 PRESIDING MEMBER KEESE: If the
2 manufacturer says it won't work, that's the end of
3 it.

4 MR. LAYTON: But we have seen this
5 language; we've discussed this language many
6 times. We still think our language is more
7 appropriate and more flexible for the applicant,
8 and better protective of the public.

9 COMMISSIONER PERNELL: So, a question.
10 If the manufacturer says, we have the filters, but
11 they not available; or a filter can go on there,
12 but there's none in California, what happens?
13 Does the job stop until that filter shows up or?

14 MR. LAYTON: The answer is no.

15 COMMISSIONER PERNELL: The answer is no
16 what?

17 MR. NGO: The job go on.

18 COMMISSIONER PERNELL: Oh, okay.

19 MR. NGO: So in other word, if they plan
20 in advance we know about it, the job go on. We
21 not going to stop them. But what we want to do,
22 the condition, we're wording it in the way to
23 prevent anything happen in the middle where
24 somebody have to stop the job. And we don't want
25 that. We want planning in advance so everything

1 goes smoothly as we could.

2 COMMISSIONER PERNELL: Oh, I see, okay.

3 MR. NGO: So that the intent of (p) and
4 (q).

5 COMMISSIONER PERNELL: So that's
6 actually giving them some flexibility to, if they
7 have a piece of equipment let's say a Cat or
8 something, and they can't get a filter for
9 whatever reason. But the manufacturer say they
10 make them. Then they would let you know in
11 advance?

12 MR. NGO: Yeah, they would. And then
13 when we see the plan, when we see that and we sit
14 down, then we start, you know, we say, we make our
15 own look into the matter like that. And if we
16 make that determination, yes, it's okay, use it,
17 then fine.

18 PRESIDING MEMBER KEESE: Let me ask a
19 generic question here. The last time, the last
20 case in which I believe this came up, we were
21 waiting for the ARB to set standards for soot
22 filters. Is that process moving forward?

23 MR. NGO: The ARB certify soot filter on
24 engine on a continuous basis. They have a
25 separate section that do nothing but

1 certification. So, that program, to answer your
2 question, yes, the program is already started, it
3 going on.

4 PRESIDING MEMBER KEESE: They're not
5 requiring them yet? Or are they going to require
6 them at some time?

7 MR. NGO: Require them on -- oh, you
8 mean on the engine?

9 PRESIDING MEMBER KEESE: Yes.

10 MR. NGO: No, no, it not require on the
11 engine. It's up to the engine manufacturer to do
12 it, to use it. And as long as they use the soot
13 filter that is certified by the ARB, already
14 certified, then it make it easier for them to move
15 forward with that piece of equipment, rather than
16 wait for administrative approval, because like we
17 all know, that would take time for anything
18 approval like that.

19 PRESIDING MEMBER KEESE: Do we expect
20 the ARB to sometime have this kind of a
21 requirement --

22 MR. LAYTON: Yes.

23 PRESIDING MEMBER KEESE: -- for offroad
24 equipment?

25 MR. LAYTON: 2007 the low sulfur diesel

1 will be required in the state. That allows soot
2 filters on pieces of equipment. It may not be on
3 all pieces of equipment. Again, soot filter is
4 not appropriate on all pieces of equipment,
5 depending on their duty cycle and things like
6 that.

7 The retrofit of existing pieces of
8 equipment with soot filters is more complicated,
9 and we understand that.

10 PRESIDING MEMBER KEESE: And that's what
11 we're talking about here generally?

12 MR. LAYTON: Generally, yes.

13 MR. NGO: Yes.

14 MR. GARCIA: Mr. Chairman.

15 PRESIDING MEMBER KEESE: Proceed.

16 MR. GARCIA: Yeah, this is for either
17 one of you, Tuan or Matt. I think Tuan said that
18 this is largely a planning exercise, and I'm
19 trying to visualize how this might work.

20 Let's take the hypothetical Caterpillar
21 that Commissioner Pernell was talking about. And
22 for that particular piece of equipment there is a
23 listed filter. Now these guys are not going to
24 heap stores of filters to last for, you know, many
25 times.

1 So, at some point, either through --
2 they went through a bunch of filters, or somebody
3 screwed up and didn't reorder, you find that,
4 gosh, you know, we're out of filters. Does that
5 mean that the work stops?

6 And that's the part that I didn't
7 understand about the planning. I mean, stuff
8 happens. What happens to the job when, you know,
9 things break down?

10 MR. NGO: When things break down, what
11 we really want to do, again back to the one what
12 I'm talking about, planning. We plan all we want;
13 in other words, we plan all one, but sometime
14 thing happen.

15 And we're not going to go out there, as
16 long as they have some planning going, we're not
17 going to go out there and stop them, you know.
18 What we're trying to do is to prevent it as much
19 as we could, in the planning process, and go
20 forward with that.

21 Now, to answer your question about the
22 hardware where the soot filter all of a sudden it
23 plugs or something, because there's too much dust
24 going on at the site, and it going through the
25 filter and it plug. They don't have a

1 replacement. All they have to do is just call,
2 let them know. And they keep going.

3 The main thing here again, the main
4 thing here is that we want them to plan so that
5 the equipment going to be onsite that's the best,
6 cleanest equipment available onsite to build it.
7 But, again, if it has happened, emergency happened
8 and, you know.

9 MR. GARCIA: When you said all they
10 would have to do is just call, do you mean they
11 would have to contact the CPM or the AQCPM onsite?

12 MR. NGO: First of all, the AQ -- the
13 air quality construction manager who is supposed
14 to be on top of all this thing. And when anything
15 happen like that, he would know immediately.

16 MR. GARCIA: Would he have the --

17 MR. NGO: And then he the one will be
18 contacting the CPM. The CPM, the compliance
19 project manager, notifies staff and then we look
20 into the matter and just say yes or no, go.

21 MR. GARCIA: So I think what you're
22 saying is that the air quality guy onsite would
23 not have the authority to approve the project to
24 continue working until you've heard from the CPM?
25 Is that what you're saying?

1 MR. LAYTON: The language in (q), as
2 written, is that unless certified by engine
3 manufacturer or the onsite AQCM that the use of
4 such device is not practical.

5 MR. GARCIA: Okay, so the guy onsite can
6 say go forward?

7 MR. NGO: Right.

8 MR. LAYTON: Yes, but we would
9 ultimately see it in a report.

10 MR. GARCIA: Okay.

11 MR. LAYTON: So we would follow up on
12 the AQCM.

13 MR. GARCIA: All right.

14 MR. NGO: In other, the word in the
15 condition flexible enough already; I don't think
16 it's any more --

17 PRESIDING MEMBER KEESE: And we are
18 pushing the envelope here. I mean you're
19 suggesting that this is going to become a standard
20 in four years perhaps. And we're requiring it
21 now, so we should --

22 MR. LAYTON: Soot filters are what --

23 PRESIDING MEMBER KEESE: -- we shouldn't
24 use -- we should be somewhat flexible.

25 MR. LAYTON: We should. Yes, soot

1 filters are widely used, more generally on onroad
2 than offroad. They work. But they're not
3 infallible, and we also have been told repeatedly
4 by CARB that they would prefer that there be more
5 successes than failures. They do not want to see
6 these things fail and get a bad reputation,
7 because they are the cornerstone of these
8 reductions planned within the state, which is
9 ultimately going to lead to a lot of air quality
10 benefits.

11 So we are very interested in these
12 things working correctly. But we are very
13 interested in having them on where appropriate.

14 PRESIDING MEMBER KEESE: And we've
15 already required low sulfur diesel?

16 MR. LAYTON: Yes. Yes. Which is pretty
17 much what's available in the state.

18 PRESIDING MEMBER KEESE: Okay. Any
19 other questions?

20 COMMISSIONER PERNELL: Yeah, you may
21 have said this and I didn't catch it, but on the
22 notification is there a timeline when they should
23 notify you?

24 MR. NGO: I guess as soon as possible.
25 And that's why we want to have one air quality

1 construction manager to be in contact with us.
2 The job of the air quality construction manager
3 two things. To look at overall picture; to make
4 sure that thing doesn't go out of ordinary. And
5 if notified of any of the problem.

6 So he will be the direct contact with
7 the CEC Staff.

8 COMMISSIONER PERNELL: Right, but
9 there's no timeline that he should contact you --

10 MR. LAYTON: Yes, there is. There's a
11 monthly report. The AQCM has to submit a monthly
12 report to CM panel, which details compliance with
13 (a) through (r).

14 So, monthly --

15 COMMISSIONER PERNELL: All right, then
16 so --

17 MR. LAYTON: But in the interim, the
18 AQCM have the option to determine which is
19 appropriate, which is not appropriate. And then
20 he'll report on that to us monthly during
21 construction.

22 PRESIDING MEMBER KEESE: Okay. Can I
23 step that back, then, because we've merged (p)
24 into (q). (p), as you have it, has no out to it.
25 It's not flexible. All large construction diesel

1 engines which have a rating of 100 horsepower or
2 more shall meet, at a minimum, the 1996 ARB or EPA
3 certified standards for offroad equipment.

4 Applicant suggests, unless the AQCMM
5 says they're not available. Is that acceptable
6 or, I mean there's no flexibility in your (p).

7 MR. NGO: No, no, it's not. The reason
8 why we object to it because in the past, in the
9 old language we are requiring the air quality
10 construction manager is someone who have a
11 engineering degree, they're licensed by the state
12 board. And he will be able to make that
13 determination. In the interest of saving the
14 applicant some dough we are saying, well, no, you
15 don't have to do that any longer. You can just
16 have a person that passed the visible emission
17 reading from the ARB. Anybody can do it, as long
18 as, you know, to reduce the cost.

19 Now, if you give that person that
20 responsibility and then make that determination
21 that the engine is yes or no not working, you may
22 not get the real picture here.

23 So that is the problem. Unless if this
24 one would work, if the applicant agree that the
25 AQCMM will be a licensed mechanical engineer, then

1 we okay.

2 PRESIDING MEMBER KEESE: Applicant seems
3 to feel that this absolute prohibition that they
4 can't use offroad equipment that doesn't meet an
5 ARB or an EPA standard is too harsh. And that if
6 there isn't a standard for the equipment, somebody
7 should let them use it.

8 MR. LAYTON: I think the applicant -- I
9 believe that most of the equipment out there is
10 '96, post '96. But there are specialized pieces
11 of equipment that maybe don't get used very often.
12 We --

13 PRESIDING MEMBER KEESE: Do you have an
14 option to give them some flexibility here?

15 MR. LAYTON: We thought about an option.
16 We haven't come up with one. I think the language
17 here being proposed by the applicant is too
18 flexible. Again, we are all for flexibility. We
19 don't have any alternative language for you at
20 this time.

21 I understand the applicant's problem. I
22 understand they're talking about a very limited
23 number. However, we would hate to make the --

24 PRESIDING MEMBER KEESE: Somebody is
25 going to have to certify that it's not available.

1 I mean I'm not --

2 MR. LAYTON: I agree. It --

3 PRESIDING MEMBER KEESE: Okay.

4 MR. LAYTON: Well, this is probably the
5 least -- well, --

6 PRESIDING MEMBER KEESE: Low on the
7 totem pole.

8 MR. LAYTON: Low on the totem pole;
9 least number of equipment; lease emissions. But,
10 at the same time, we thought we generated a
11 condition here that's very flexible. We just hate
12 to even make it more flexible because eventually
13 we're not going to have enforceability.

14 MR. NGO: We did, in addition to that we
15 asked the applicant in the meeting, tell us, what
16 equipment that you're looking at that are not
17 meeting the '96 standard. They couldn't come up
18 with one single example of that equipment.

19 And so we just say, well, until you come
20 up with what you know that is not going to do
21 something that should, we would do something about
22 it.

23 Now, is not that we wouldn't want to
24 change this again; we agree if this is what the
25 applicant want to change to this language, we okay

1 with it as long as we change the condition AQC-1,
2 SC-1, to make that air quality construction
3 manager is a professional licensed mechanical
4 engineer in the State of California. Then we go
5 for it. We will agree to the change.

6 PRESIDING MEMBER KEESE: Well, a
7 certification at some --

8 COMMISSIONER PERNELL: Who would that
9 person work for, the applicant? I mean the
10 applicant would have to go out and hire a --

11 MR. NGO: Yes.

12 COMMISSIONER PERNELL: -- professional
13 engineer to be on the project until it's done?

14 MR. NGO: Yes. So it up to them. I
15 mean, you know, it's not like we -- I'm sorry.

16 PRESIDING MEMBER KEESE: I can see that
17 in some of the other things here that require
18 technical expertise. I'm not sure that
19 availability of a piece of equipment is something
20 that requires a great deal of technical expertise.
21 I'd be happy to delegate it to Ms. DeCarlo.

22 (Laughter.)

23 PRESIDING MEMBER KEESE: If it's not --
24 you demonstrate it's not available, it's not
25 available. I mean I'm not sure the word available

1 is the -- I think we should say what available
2 means.

3 MR. NGO: Well, on the other hand may I
4 suggest another option to this?

5 PRESIDING MEMBER KEESE: Sure.

6 MR. NGO: I just thought of one. How
7 about having the wording, unless certify by the
8 onsite AQMM and then instead of saying that, and
9 which end, unless certify by the manufacturer.
10 That a certified engine is not available.

11 Because I do not want to give the AQCM
12 that responsibility to make that determination
13 without proper knowledge and understanding of the
14 engines and how to operate. And that if that
15 language okay with the applicant then we go for
16 it.

17 MR. HARRIS: If I could?

18 PRESIDING MEMBER KEESE: Applicant.

19 MR. HARRIS: It's not okay. Let me
20 explain to you why we think certification is
21 important, okay. Ironically here, Matt and I have
22 got to switch places. I think sometimes when
23 government goes slow, except for power plant
24 siting, it may be good.

25 But the reason certification is

1 important to us is number one, if an item is
2 certified, it will work. Number two, if it's --
3 we're worried about potentially with the engines,
4 the anti-tampering issue, as well.

5 COMMISSIONER PERNELL: I'm sorry?

6 MR. HARRIS: The anti-tampering issue.
7 If it's certified we know we're not going to run
8 afoul of potential anti-tampering issues, because
9 it's a certified EPA approved filter.

10 The third reason is that there are
11 manufacturers out there who are more than willing
12 to sell you uncertified filters all over the
13 place. They'll sell you anything that's not
14 certified. In fact, if they're a good company
15 they're probably running down parallel paths of
16 seeking certification and trying to sell things.

17 I think what staff's condition may end
18 up doing is putting staff in the position of
19 having manufacturers come to staff and say, well,
20 EPA or CARB is going to certify this in a few
21 years. Why don't you require it.

22 And that, I think, puts the staff in the
23 middle of a commercial relationship. And it puts
24 them in the middle of a regulatory process. We
25 really are looking for the certainty of

1 certification.

2 MR. LAYTON: We're not advocating any
3 particular technology. What we're trying to do is
4 minimize emissions. Because the impacts are
5 significant from construction.

6 PRESIDING MEMBER KEESE: Yes, I
7 didn't --

8 MR. LAYTON: That's our first and
9 foremost thought.

10 PRESIDING MEMBER KEESE: I didn't
11 understand that (p) dealt with soot filters,
12 but --

13 MR. HARRIS: I was addressing more --

14 PRESIDING MEMBER KEESE: Is that what
15 you're saying? Certification means soot filter?

16 MR. LAYTON: No.

17 MR. NGO: No, the '96 engine, sir.

18 MR. LAYTON: Post '96 engines do have an
19 anti-tampering requirement which we fully
20 understand. And ARB has discussed this with us
21 many times. We have no interest in tampering with
22 these engines and violating their warranties.
23 That would be a very practical reason, as
24 specified in (q), that a soot filter would not be
25 appropriate if you were going to violate the

1 tampering.

2 Same thing with preemption, with the
3 federal.

4 PRESIDING MEMBER KEESE: Okay.

5 MR. LAYTON: We've talked about this and
6 we believe that the language here addresses the
7 other two agencies, the feds and the state. We do
8 not wish owners to get in trouble with either one.

9 PRESIDING MEMBER KEESE: Okay. We'll
10 struggle with that one, ourselves. Okay, so we're
11 done with (p) and (q).

12 MR. NGO: Okay, we're done with (p) and
13 (q). And on AQ-SC-4, we agree with the language
14 that the applicant have in the submittal, in the
15 comment. But the new one without a fence and
16 property, I need time to think about it. I need
17 time to think about it because they --

18 UNIDENTIFIED SPEAKER: You don't have
19 much time to --

20 MR. NGO: I know --

21 (Laughter.)

22 COMMISSIONER PERNELL: We don't have
23 much time.

24 PRESIDING MEMBER KEESE: Here's the
25 clock starting right now.

1 (Laughter.)

2 MR. NGO: I'm sorry, you know, we said
3 that in other hearing before there was some
4 invisible dust that we didn't see, invisible PM10
5 or PM2.5 that we didn't see. And I don't want
6 to -- I didn't want to --

7 PRESIDING MEMBER KEESE: Actually what
8 they've said is they'll be doing work on this
9 adjacent property, so that they will have
10 something that's visible when they're working on
11 it. So they're defining their property as not the
12 fenceline but the property they're working on.

13 MR. LAYTON: Well, our concern has
14 always been that the visible plume consists of a
15 wide variety of PM10 or PM particles, some of
16 which are visible to the naked eye and some of
17 which are not.

18 So what could be leaving the site could
19 be rather significant, but not necessarily
20 visible. So we're trying to, by confining the
21 visible plume, we hope to contain the overall
22 emissions from the site.

23 Again, construction activities result in
24 very significant emissions and significant
25 impacts.

1 PRESIDING MEMBER KEESE: Okay. I
2 thought we were talking about the addition of the
3 words, or the adjacent lands owned by the
4 applicant.

5 MR. LAYTON: Also deleting the word
6 fence.

7 PRESIDING MEMBER KEESE: Right.

8 MR. LAYTON: You fence a small area for
9 reasons of safety, to try to keep the construction
10 personnel, or keep the public away from the
11 construction site. That does actually protect the
12 public in the sense that they're now further
13 removed from the construction activity. But it
14 also makes it more definitive about how far that
15 visible plume can go. We're really trying to
16 curtail the visible plume, which in theory will
17 curtail the overall emissions from the site.

18 PRESIDING MEMBER KEESE: Okay, so I
19 guess what you're saying is if they want to use
20 adjacent lands for the construction they should
21 fence it.

22 MR. LAYTON: Yes.

23 PRESIDING MEMBER KEESE: The farther
24 they put the fence back the less they'll have to
25 do.

1 (Laughter.)

2 MR. HARRIS: The fence company's happy.

3 (Laughter.)

4 PRESIDING MEMBER KEESE: Going to have
5 one happy fence company.

6 MR. LAYTON: Again, Chairman, once the
7 PM10 is airborne it does travel. The visible
8 plume is some of the bigger chunks. They actually
9 fall out rather quickly. But once the PM10 is
10 airborne, I mean the whole reason we have a
11 standard for PM10 is because they act as a gas.
12 They're highly mobile and once they get up there
13 they're moving. They're not necessarily going to
14 fall down within, you know, 30 yards, 40 yards,
15 100 yards of the site. They're going to just go
16 on and on.

17 PRESIDING MEMBER KEESE: I understand
18 your position; I understand their position.

19 Okay.

20 MR. NGO: So that cover the construction
21 condition. And then on to the applicant comment.
22 I would like to go real quick on this thing
23 because I think you cover most all of this before.
24 And I didn't want to bore you to death with it.

25 First of all, on item number 1, the

1 applicant suggest that the VOC NOx ratio of
2 whatever of the Bay Area is applicable to the San
3 Joaquin --

4 PRESIDING MEMBER KEESE: What page are
5 we on?

6 MR. NGO: Oh, I'm sorry, on page 1. On
7 page 1 of the applicant brief. The very first
8 item on page 127 of the revised PMPD, the
9 applicant recommend that --

10 PRESIDING MEMBER KEESE: Okay.

11 MR. NGO: -- that wording be changed. I
12 just want to make it real quick. On this one,
13 yes, I believe that what the applicant arguing
14 over here is correct, but it only apply to the Bay
15 Area Air Quality Management District. When it
16 come to the San Joaquin County, rule and
17 regulations thing are different.

18 So what they say here correct for the
19 Bay Area, but it not necessarily correct for the
20 San Joaquin. So I think the statement on page 127
21 in the Committee PMPD are correct. No change
22 necessary.

23 MR. LAYTON: I'd also like to add the
24 applicant points out that San Joaquin accepted the
25 applicant's analysis and the trading ratio. San

1 Joaquin also accepted Bay Area's transport ratio,
2 which we used to determine effectiveness.

3 So it seems like the applicant's pointed
4 out that on one hand San Joaquin accepts one
5 thing, but, you know, we have to then take it as
6 gospel; but when the San Joaquin and the applicant
7 accept something else, well, we get to discount
8 that.

9 So I just think there's some
10 inconsistency there.

11 PRESIDING MEMBER KEESE: The greatest
12 problem that the Committee has had in doing this
13 analysis is that the San Joaquin LORS analysis or
14 whatever you want to call the San Joaquin -- I
15 don't think we call it a CEQA analysis -- the San
16 Joaquin LORS analysis is totally theoretical.

17 MR. LAYTON: Yes, it is.

18 PRESIDING MEMBER KEESE: And so where
19 San Joaquin used their analysis and came up with a
20 number, theoretically; staff used some of San
21 Joaquin's and some other and came up with another
22 number, theoretical again.

23 And I would agree with applicant when we
24 talk about an absolute number. If we're talking
25 about mitigating cumulative impacts, which is most

1 likely what we have when we have a project in one
2 county moving to the next, we're really talking
3 about qualitative relief, not quantitative.

4 And we have chosen, as a Committee, to
5 accept a qualitative number out of a hypothetical
6 LORS analysis as the best standard that we can
7 find that will mitigate all impacts, no matter how
8 they're coming from.

9 And at times I've been concerned about
10 analogizing to major auto centers, which are
11 obviously located in the jurisdiction where they
12 can avoid taxes and get a lot of concessions. And
13 penalize those who are across the border.

14 And to an extent we have something like
15 that here. We have -- there's certainly all sorts
16 of logical reasons to put this power plant exactly
17 where it is. The infrastructure is there; there's
18 other reasons. But it does cause something unique
19 in that it pushes the tax benefits away from the
20 area that is most densely populated.

21 And I think the Committee, as all
22 committees I've seen, recognizes that major
23 activities have impacts on communities of one sort
24 or another. Some communities choose road paving;
25 some communities choose other things. Alameda

1 chose fire activities.

2 The Committee felt, and the applicant
3 heard, that we should do something to benefit
4 where the population center is.

5 So, without getting into a major
6 discourse here between what we've heard from
7 applicant and what is here, we have gotten -- this
8 Committee has pretty much settled on what we
9 believe is the best avenue for doing benefit to
10 San Joaquin that we can. And we're not going to
11 dot the i's and cross the t's on whether we --
12 what theoretical basis we're doing that on.

13 We just want to take care of San
14 Joaquin, and this looks like it's good. And this
15 seems to us to meet all the standards of
16 mitigation that anyone might consider.

17 MR. NGO: Chairman, I have the same
18 thought about this project as you all. The
19 project, if we applying what we know within the
20 state implementation plan for the San Joaquin and
21 for the Bay Area based on the ARB transport study
22 of 27 percent, the project will not going to be
23 able to be site in this area.

24 And so we are trying to do a much more
25 lenient way by going through with my exercising of

1 using the actual ambient data so we can reduce or
2 we can increase, we can find out there were
3 evidence to support the effectiveness of the
4 emission reduction credit that are proposed by the
5 applicant in the Bay Area; and therefore, we
6 reduce the amount of liability of emission
7 reduction credit that the applicant to be able to
8 get to site the project, to license the project.

9 And, anyway, I'm not complaining but
10 somehow because what I did, all a sudden everybody
11 is like on my case because they keep saying that
12 my method were out of the ordinary, unorthodox or
13 whatever you want to call it.

14 And so far, but you know, I agree with
15 you this, we try to site a project. We did not
16 try to not to build, not to recommend not to
17 build, but you know, we just want to make sure
18 that benefit are due to where it's supposed to be
19 due. And then the benefit to the area, to the
20 local area essentially meeting it.

21 Back to the comments.

22 PRESIDING MEMBER KEESE: Okay.

23 MR. NGO: I think we have --

24 PRESIDING MEMBER KEESE: You're going to
25 get me to make another speech.

1 (Laughter.)

2 PRESIDING MEMBER KEESE: And you don't
3 want that.

4 MR. NGO: Anyway, on to the condition,
5 you know, I have a few comment with the other item
6 that I think is really minor. So I wouldn't want
7 to talk about it.

8 And I want to jump to the applicant
9 brief on page 8 which deal with the condition AQ-
10 SC-5. First of all, --

11 PRESIDING MEMBER KEESE: This
12 applicant's page 8 or your page?

13 MR. NGO: Page 8.

14 PRESIDING MEMBER KEESE: Applicant's?

15 MR. NGO: Yes. Of the applicant brief.
16 And start out somewhere almost at the middle of
17 the page when they start have a discussion and
18 comment on AQ-SC-5.

19 And I want to say something somebody
20 might get offended by it, but, you know, I just
21 have to say -- have to say it. If I offend
22 somebody, I'm sorry.

23 First of all, the \$1 million or the 66.8
24 ton per year that the applicant refer to in the
25 air quality management plan, I'm sorry, air

1 quality management agreement, is nothing but
2 reverse calculation to make sure that the amount
3 of money match the amount of money that are
4 required in another case, in the Tesla case.

5 And so that's why you see something like
6 they come up with, they only come up with that.
7 Remember in that calculation in the AQMA, they
8 only come up with 33.4 tons. And then the
9 district have been using a 50 percent discount for
10 emission reduction credit cost, their cost. The
11 cost of going on, low cost, \$30,000 per ton. The
12 district was saying, well, you know, we take 50
13 percent, we give you 50 percent discount on this.

14 And therefore they taking \$15,000.

15 Now, to come up with that, they come up
16 only to about \$400,000, a little more than
17 \$400,000. And so all of a sudden this one was
18 much less than Tesla. So what they do, they
19 multiply it by two. They call that safety factor,
20 and so they come up to that. Oh, by, look this
21 number, look exactly a million dollars. So we
22 doing okay.

23 So, that is 66.8 ton per year --

24 PRESIDING MEMBER KEESE: Recognizing
25 that Tesla --

1 MR. NGO: -- coming from --

2 PRESIDING MEMBER KEESE: Recognizing the
3 Tesla case is not before us, --

4 MR. NGO: Yeah, and I'm sorry, yes, yes.
5 True, true, but I, you know, --

6 PRESIDING MEMBER KEESE: -- and that
7 you're just not sure that they --

8 COMMISSIONER PERNELL: -- taking notes,
9 though --

10 (Laughter.)

11 MR. HARRIS: We're willing to stipulate
12 the 400, if that's okay.

13 PRESIDING MEMBER KEESE: And you're just
14 not totally sure that this was charitable activity
15 on behalf of the applicant.

16 MR. NGO: No, no, no. So, I mean, you
17 know, so when you look at it, I mean the Committee
18 PMPD coming out with, I guess, the comment that
19 staff analysis is not supported. But then, on the
20 other hand, the Committee support the calculation
21 in the AQMA which with -- I feel kind of hurt
22 because I spent a lot of time -- but anyway, I
23 don't want to get into that.

24 Second item on the applicant comment was
25 that the 66.8 ton that are referred to in the air

1 quality, on the AQ-SC-5 was the admission that if
2 you use all million dollars in the very first year
3 alone, then -- and as long as you have -- engine,
4 nobody has to participate in the program in the
5 first year alone, then you get that. You get that
6 amount of 66.8 tons.

7 But then that amount would be spread out
8 over the entire 7.7 lifetime of the mobile source
9 of the equipment. And therefore, when you really
10 look into it, even though the AQMA say 66.8 ton
11 per year, when you really look into it, you have
12 to divide it by 7.7. So the bottomline you are
13 talking about less than 10 ton a year of emission
14 reduction that will be resulted from the AQMA.

15 And then after that 7.7 year life of the
16 control measure on the equipment, you don't have
17 nothing.

18 Now, when you look at that and you
19 compare to the emission from the project, the
20 project will last your 30 year, 40 years. And
21 each year to put in the atmosphere 175 ton of NOx
22 that is not mitigated.

23 And in addition to that, another 50 ton
24 per year of PM2.5 and PM10 that are not mitigated.
25 So we have a problem here. We have inequity here.

1 And then the applicant -- well, I want
2 to go through this one, another one here in --

3 PRESIDING MEMBER KEESE: Yes, let's --

4 MR. NGO: -- on page 9.

5 PRESIDING MEMBER KEESE: -- let's be
6 specific about what we've got a problem with.

7 MR. NGO: What I'm saying the problem
8 with AQ-SC-5, again we've heard, I will get to it,
9 to our comment. And I will say the equity -- we
10 have two problem with it.

11 Number one, 66.8 ton is not supported by
12 any -- by the evidence that are presented in the
13 proceedings so far.

14 Number two is that 66.8 ton doesn't have
15 a timeline to it. If you really want to put a
16 timeline to it, it have to be the quantitative
17 emission of emission reduction in term of tons per
18 year. And if you just want to use ton alone, ton
19 alone, you got to compare to the life of the
20 project, itself. So you can see the enormous
21 amount of tonnage of the facility over the entire
22 life. So that's where my problem with the
23 applicant comment on that.

24 Go on to page 9. Okay, the applicant, I
25 guess it's about somewhere in the middle of page

1 9, the third paragraph. The applicants object to
2 the verification language from the AQ-SC-5. And I
3 can understand, you know, that they afraid that,
4 you know, later we're going to try to do some
5 funny to the condition that will cause them
6 miserable.

7 But the thing here is that this is what
8 happen. We have complying verification for two
9 Calpine project right now. I'm working on it
10 right now at the moment. And we have similar
11 problem, verifying compliance. We don't even know
12 whether they comply or not with the licensing
13 condition.

14 Number two, we contact the district, the
15 Los Medanos and Delta project in the last two year
16 alone receive 48 note of violation to the district
17 condition alone. And we didn't even know about
18 it. We don't even know. They don't tell us until
19 we call the district. And the district say, oh,
20 yeah, we have 48 note of violation. And they are
21 still operating in -- mode right now.

22 So, --

23 MR. HARRIS: I just want to note, number
24 one, my distaste with the discussion of compliance
25 projects that are ongoing. And number two, I'd

1 also note that any of those NOV's, assuming that
2 they exist, are not construction related. And
3 this condition is construction related.

4 MR. NGO: No, this AQ-SC-5 is not
5 construction related, operation related, but it's
6 NOV for the other one, and then in addition to
7 that, thank you for your comment -- in addition to
8 that, in addition to what we see, we see the NOV.
9 In addition to that, the verification complying
10 that we have on those two facility I could not
11 even verify by their calculation this operation of
12 the facility. I cannot verify whether they will
13 meet the emission standard, whether they meet the
14 emission cap, or the emission for the entire
15 facility on this.

16 So we have a lot of problem verification
17 of that. And that's why it's so important that we
18 have all the reporting in advance. If they have a
19 problem which having the reporting problem, we can
20 always work it out afterward, and we can work
21 together to come up with something that are cheap
22 enough, that easy enough for Calpine to follow.

23 And then we can be able to work toward
24 it and make sure that we have reporting
25 requirement, and you know, verification compliance

1 so that we know and they know, to their benefit,
2 too.

3 So, important; so, therefore, we're not
4 suggesting changing to what the applicant comment
5 here on the AQ-SC-5, on the verification part. I
6 think I said enough about the applicant comment.

7 MS. DeCARLO: We've submitted our
8 comments. I don't think the Committee -- unless
9 the Committee wants us to elaborate on our written
10 comments?

11 HEARING OFFICER WILLIAMS: No, if it's
12 been submitted, we appreciate your comments in
13 response to applicant, but we don't really need
14 you to comment on the written material that you've
15 submitted already.

16 MR. NGO: Okay, I guess that's all I
17 have to say.

18 MR. LAYTON: I do have a couple
19 comments.

20 HEARING OFFICER WILLIAMS: Okay.

21 MR. LAYTON: A couple, brief. Again,
22 the 66 tons. We would prefer 225; that's what we
23 recommended. We do not think the 66 is adequate,
24 but we would, I guess, be perplexed as to why 33
25 would be adequate when the project next door,

1 which we're not litigating here today, requires
2 66.

3 Again, the methodologies are subject to
4 a broad range of interpretation --

5 HEARING OFFICER WILLIAMS: Yeah, I
6 think, I think --

7 MR. LAYTON: Well, that just suggests
8 that --

9 HEARING OFFICER WILLIAMS: Well, let me
10 just say, I --

11 MR. LAYTON: -- the method used here is
12 the appropriate method, I guess.

13 HEARING OFFICER WILLIAMS: -- let me
14 just say that the Committee does not believe, the
15 Committee is not willing to go back to 33.

16 MR. LAYTON: Thank you. Along the same
17 lines, then, I think we would be concerned, what
18 we would like to see that on the top of page 10,
19 the applicant has suggested that the project owner
20 be deleted and the word program be inserted.

21 We would prefer again to see the project
22 owner held to task for coming up with the tons.
23 And we would like to see the word years put in
24 there, 66 tons per year would be the appropriate
25 thing.

1 HEARING OFFICER WILLIAMS: Yeah, and I
2 think the Committee is willing to do that.

3 MR. LAYTON: And I guess we don't agree
4 to some of the other changes that the applicant
5 has recommended, deleting item 2, deleting item 3
6 out of the condition, taking away some of the
7 words shall.

8 We think you've constructed a very
9 strong condition here which has reporting and
10 enforceability requirements. So we would prefer
11 that it be, I guess, left as is.

12 On item number 5 we have a concern about
13 the delivery of the turbines.

14 PRESIDING MEMBER KEESE: What page?

15 MR. LAYTON: On page 10, item number 5
16 under SC-5.

17 PRESIDING MEMBER KEESE: Got it.

18 MR. LAYTON: We've had some projects
19 where the turbines have been delivered and then
20 nothing happens. So they've actually ended up
21 violating their permit condition because they're
22 not necessarily actively constructing.

23 So I guess just be forewarned that
24 projects nowadays do get delayed. Things may get
25 delivered and stored on site. So, the applicant

1 may not want to agree to this, either, because it
2 actually, it's problematic. Yeah, I mean -- so.

3 And also I guess backing way up, the
4 decision, and the applicant has reemphasized our
5 comment that we challenged the Bay Area on their
6 offset methodology. We have not. We concluded in
7 our analysis that, in fact, the project does
8 comply with Bay Area's LORS. We do not have a
9 problem with their methodology.

10 Again because of the unique location we
11 are concerned about other unmitigated impacts.
12 And therefore we have recommended other forms of
13 mitigation above and beyond the offset
14 requirements.

15 HEARING OFFICER WILLIAMS: I think the
16 Committee understands that.

17 MR. LAYTON: Okay, it just comes up in
18 several places. I think we pointed it out in our
19 brief to you.

20 HEARING OFFICER WILLIAMS: Okay, we'll
21 seek to make that clear in the final decision.
22 Anything further?

23 MR. LAYTON: The applicant brought up
24 earlier that we had some proposals on the table a
25 long time ago, the solar panels, paving, those

1 were proposals. They were subject to scrutiny;
2 they were subject to debate. They may not have
3 satisfied all the requirements of mitigation, but
4 they were proposals that were initial attempts to
5 try to find some middle ground and resolve the air
6 quality problems.

7 Those proposals were very specific for
8 local. They would provide some regional benefit,
9 as well.

10 Conditions we have since written in our
11 briefs do allow for ERCs instead of just this more
12 localized things. The tons from the local
13 mitigation of proposals we made may have been less
14 than a ton you might get from an engine or from
15 say an ERC. But they were just that, proposals.
16 And they never apparently rose to the level of
17 satisfaction for both the applicant or the
18 Committee, therefore they didn't go forward.

19 So, I guess to cast doubt on those at
20 this point in time, I don't think is very
21 appropriate.

22 PRESIDING MEMBER KEESE: Do you agree
23 with the thrust of what we've heard from San
24 Joaquin and the applicant that there would be a
25 bid process of eligible projects. And that the

1 lowest cost per ton would be a principle criteria?

2 MR. LAYTON: I believe that would be --

3 PRESIDING MEMBER KEESE: Obviously
4 emphasizing northern San Joaquin --

5 MR. LAYTON: I believe that would be the
6 driving mechanism.

7 PRESIDING MEMBER KEESE: And staff is
8 prepared to support mitigation project that would
9 fall in that area? See, you know, frankly I
10 believe that we could have done this without
11 tonnage. We could have done monitoring programs.
12 We could have done a lot of things that helped San
13 Joaquin out. We didn't have to do tons.

14 Because there's an AQMA sitting out
15 there that gave us tonnage, we made that choice.
16 So, in our analysis we weren't so concerned that
17 we had to wind up at a tonnage. We did.

18 MR. LAYTON: Well, I think the
19 applicant, on page 9, discusses whether Otay Mesa
20 and Palomar are appropriate projects to refer to
21 when talking about say dollars for mitigation.

22 PRESIDING MEMBER KEESE: I don't think
23 we have a chance to read those between now and
24 Wednesday.

25 MR. LAYTON: Well, I mean but the

1 applicant has raised the question, and it goes to
2 the issue of San Joaquin. San Joaquin air quality
3 is not getting very good very fast. They are
4 making improvements, but they are considering
5 redesignation because they aren't making enough
6 progress.

7 San Diego, on the other hand, has just
8 reached attainment of ozone. So, I guess my
9 concern about not having tons, but just leaving
10 dollars to San Joaquin, they have so many
11 necessary reductions just to make progress, not
12 necessarily reach attainment, that we want to make
13 sure that those are tons that aren't necessarily
14 being already used by some other program or
15 something for, you know, air quality purposes.
16 They want to be tied to this project. So we think
17 the tons is very appropriate in this case.

18 I understand your --

19 PRESIDING MEMBER KEESE: So does the
20 Committee.

21 MR. LAYTON: Good. Thank you.

22 PRESIDING MEMBER KEESE: Thank you.

23 HEARING OFFICER WILLIAMS: San Joaquin,
24 do you have anything further at this point?

25 MR. SWANEY: No, we do not.

1 HEARING OFFICER WILLIAMS: Okay. Mr.
2 Sarvey.

3 MR. SARVEY: Can I be allowed just like
4 a minute to organize and to give this to the
5 applicant?

6 HEARING OFFICER WILLIAMS: There's
7 something you haven't give us?

8 MR. SARVEY: -- I hand out to --

9 HEARING OFFICER WILLIAMS: Okay.

10 MR. SARVEY: I just want to make sure
11 you have it in order --

12 (Pause.)

13 MR. SARVEY: Now, a lot of this
14 discussion can be cut off, and I think I heard
15 correctly that the Committee is going to correct
16 SC-5 to reflect the 66.8 tons per year, is that
17 correct?

18 HEARING OFFICER WILLIAMS: That's right.

19 MR. SARVEY: Okay, thank you, that will
20 eliminate a lot of things.

21 Now, I'd like to talk about a little bit
22 of revisionist history of the record here that was
23 advanced by the applicant.

24 First of all, the applicant handed out
25 something concerning CEQA guidelines here. And

1 Mr. Harris is implying that CEQA is equivalent to
2 the air district rules. And the record reflects
3 differently.

4 Mr. Yang has stated from the Bay Area
5 Air Quality Management District that CEQA is the
6 responsibility of the CEC, not the air district.
7 And obviously if there was no CEQA requirements on
8 this particular project these people would not be
9 sitting here. So, let's make that clear to begin
10 with.

11 Mr. Harris put a lot of emphasis on item
12 3, it says air quality. It says, where available
13 significance criteria by the applicable air
14 quality management district or air pollution
15 control district may be relied upon to make the
16 following determination.

17 Well, I think the most important items
18 where he says that is where available. Obviously
19 in this instance, and the Chairman has pointed
20 this out, this is an unusual situation. There is
21 no rules available to advance a mitigation scheme
22 for this particular situation. We're sitting
23 right on the border, so this part of CEQA is
24 definitely not applicable.

25 It also says may be. Now, may be would

1 imply that there is no other way to look at this
2 project, or there is no CEQA analysis to rely on,
3 and which, in fact, we do have one which has been
4 submitted by the CEC. Which I feel has been a
5 fairly comprehensive analysis. And I only agree
6 with one point, and that's the 70 percent
7 transport factor from Antioch.

8 So, in any event, I want to talk about
9 the fact that the Committee is placing a great
10 reliance on San Joaquin Valley Air Pollution
11 Control District's statement that all effects have
12 been mitigated in San Joaquin County.

13 And I want to point to that first part
14 of my handout, it's page 231. And this is part of
15 the record. While questioning Mr. Rubenstein, he
16 said that he was uncomfortable with the
17 methodology that San Joaquin had advanced to him
18 in terms of determining a mitigation amount for
19 this project.

20 So, essentially, as it goes on in the
21 evidence here, Mr. Rubenstein has developed his
22 own air quality mitigation scheme here, with his
23 own amounts. And it says on top of page 231 where
24 I've outlined in yellow, the San Joaquin District
25 was uncomfortable with that approach. Which is

1 why we have doubled the 33 tons to 66 tons.

2 So I want to make clear that the
3 Committee is not relying on this district's
4 analysis. They're relying on the applicant's
5 analysis that this project has been fully
6 mitigated in San Joaquin County. This is not a
7 district determination. The applicant was
8 uncomfortable with the district's proposal. They
9 developed their own and that's what we're dealing
10 with.

11 We're not relying on something that the
12 pollution control district independently analyzed,
13 did a CEQA analysis, did an ambient air quality
14 study, did a health risk assessment. They've
15 admitted on the record they've done none of that.
16 Essentially taken a look at the applicant's
17 proposal here. They're uncomfortable with it, as
18 stated by Mr. Rubenstein in the record. So
19 they've asked for a doubling of the NOx. And I
20 understand that.

21 So then we move on to the air mitigation
22 agreement, and I want to take -- that was the
23 agreement that I thought Mr. Harris was referring
24 to earlier. And I want you to take a look on page
25 3, item 5, I have a little yellow asterisk there.

1 Under that it's the part of the
2 agreement which refers to cooperation. It says,
3 the parties agree to cooperate with each other
4 with respect to any requests or actions relating
5 to this agreement from the CEC.

6 That's very telling. The air district
7 is now bound by this agreement to make this
8 particular mitigation scheme work. They are not
9 allowed, under this agreement, to refute anything
10 the applicant says.

11 Since this mitigation agreement was
12 developed the CEC has presented their mitigation
13 strategy, which Mr. Swaney, or the pollution
14 control district may or may not accept. But by
15 this agreement they have to support this
16 agreement. They are not allowed to say that this
17 is wrong, what the CEC has done is wrong.

18 It's not an arm's length deal is
19 basically what I'm saying. These people have to
20 say this because they're bound by this agreement.

21 So I think it's important, since this
22 Committee is placing so much reliance on the
23 pollution control district's statement that all
24 impacts in San Joaquin County are mitigated, that
25 they understand first of all, it's the applicant's

1 mitigation scheme, it's not theirs.

2 And second of all, other information has
3 come up since this agreement was executed and
4 they're not allowed to take a position contrary to
5 what this thing says. By law they're bound by
6 this agreement. You do not have an arm's length
7 transaction. You do not have an independent
8 agency to rely on to say that all impacts are
9 mitigated in San Joaquin County.

10 I handed out the two different varying
11 mitigation schemes. One was the initial one that
12 Mr. Swaney had using the Tesla sort of mitigation
13 scheme. The other was the East Altamont. And I
14 don't want to go into great detail into that,
15 because we've already talked a lot about that.

16 But, you can see that the San Joaquin's
17 initial mitigation strategy was similar to what
18 the CEC adopted. They took a 23 percent transport
19 factor. The applicant wasn't comfortable with
20 that. So essentially what I'm saying again is
21 you're taking the applicant's mitigation strategy,
22 their formula for mitigation in this area. And it
23 has nothing to do with what the pollution control
24 district has initially decided was the proper way
25 to do it.

1 So, once again, you're relying on
2 something that the applicant has produced. That's
3 not an independent party. I don't think that the
4 Committee really wants to rely on the applicant's
5 ideas of what's full mitigation in San Joaquin
6 County and Valley. I mean that's just -- it goes
7 against everything that we're here about.

8 We're here for an independent analysis
9 which the staff has provided. In my eyes I don't
10 see any problems with the analysis. I think it's
11 a good analysis. There's a couple of items, like
12 I said the 70 percent transport factor. I think
13 that that's important. And staff has recanted
14 that in their testimony, that they just did that
15 so that the applicant could site this project
16 without going broke. So I mean that's clearly
17 something that the Committee needs to address.

18 And they need to be aware, once again,
19 this is the applicant's ideas of what mitigation
20 are. It's not the Bay Area, it's not San Joaquin,
21 it's the applicant's. And the idea in this
22 proceeding is to get an independent assessment
23 that the public can rely on, that all impacts to
24 the San Joaquin Valley and the Bay Area are
25 mitigated. And by relying on this agreement, the

1 Committee has erred. And that's all I want to
2 say.

3 HEARING OFFICER WILLIAMS: Thank you,
4 Mr. Sarvey. Any public comment? Ms. Sarvey.

5 MR. HARRIS: Mr. Williams, we'd like an
6 opportunity to respond to a couple things at some
7 point. We can do it after public comment.

8 HEARING OFFICER WILLIAMS: Okay.

9 MS. SARVEY: Susan Sarvey, Clean Air for
10 Citizens and Legal Equality.

11 I would like to share a corollary with
12 you. The country knew for years that smoking and
13 second-hand smoke killed you. It took years of
14 people and the American Medical Association and
15 the American Lung Association to get the powers
16 that be to take action to educate and protect the
17 public health and safety from these health risks
18 from smoking.

19 No amount of spin could make the truth
20 go away. Now everyone accepts the risks
21 associated with smoking and second-hand smoke.

22 San Joaquin Valley is in severe
23 nonattainment for air quality. The public knows
24 this. Many people have children and family
25 members quite ill or dying from lung problems and

1 asthma, severely exacerbated by bad air,
2 specifically from NOx, particulate matter and
3 ozone.

4 Today is a spare-the-air day. Sixty-
5 seven percent of East Altamont Energy Center's
6 ERCs are pre-1990. They will do nothing to
7 improve Tracy's air quality.

8 The citizens of Tracy have proved their
9 awareness of this problem, and their willingness
10 to be part of the solution. The GWF Oversight
11 Committee recently had a lawnmower exchange
12 program and gave away 550 battery lawnmowers in a
13 couple of hours. And the residents are asking for
14 more. They came at 2:00 in the morning for a
15 10:00 starting time.

16 I am working on the school bus retrofit
17 program and the CNG program with Tracy Unified
18 School District, the Lammersville School District,
19 Jefferson, New Jerusalem and Lammersville. The
20 people understand we all have to work together to
21 solve our air problems.

22 Calpine should be conditioned to provide
23 funding for real-time emission reduction for Tracy
24 just like GWF did. We will get the bulk of their
25 pollution in a severe nonattainment area. We need

1 real-time emission reduction.

2 Tracy citizens and myself are working
3 hard for free to implement clean air for Tracy
4 quite successfully. Everybody needs to help.
5 Calpine is exacerbating our bad air. Bickering
6 about how accountable they should be is
7 counterproductive. We need to work together.

8 We have proved our ability to make a
9 difference. East Altamont Energy Center needs to
10 show their willingness to be part of the solution
11 in alleviating this problem for our air quality.
12 They need to work with the citizens to mitigate
13 their choice of coming to a severe nonattainment
14 area with huge negative emissions. Again, 67
15 percent of their ERCs are pre-1990.

16 Commissioners, please be brave leaders
17 and lead us to a solution for air quality. Don't
18 accept the status quo.

19 Commissioner Pernell, we need your
20 expertise and guidance. How could we have
21 foreseen in the Tracy Peaker Plant siting, the
22 city choosing to put all our young children on the
23 doorstep of a power plant, glass plant, and
24 biomass plant playing sports in the heat and all
25 those emissions?

1 The CEC cannot assume city government
2 has the education to understand the health risks
3 associated with bad air quality and power plant
4 emissions. You need to protect the citizens of
5 Tracy from ignorance on these important quality-
6 of-life impacts associated with the power plant
7 siting case.

8 Thank you so much for trying to help in
9 my fire situation. I really hope you don't back
10 down. And I hope you will really care about my
11 community. Thank you.

12 HEARING OFFICER WILLIAMS: Thank you,
13 Ms. Sarvey.

14 COMMISSIONER PERNELL: Thank you.

15 HEARING OFFICER WILLIAMS: Thank you for
16 your participation in these proceedings. I think
17 we've benefitted from it.

18 Ms. Mendonca.

19 MS. MENDONCA: Good afternoon. I have a
20 public comment from Marianne Griffith. She and
21 her husband were here earlier this morning. And
22 she has written several times to the Commissioners
23 and my office will, of course, take this letter
24 and docket it for you. She represents the
25 Mountain House School District:

1 "Why is it that millions of dollars are
2 going to sources miles away from the
3 Calpine plant area, but the school,
4 which is going to receive the bulk of
5 the pollution, noise, visual distraction
6 or destruction has only been given
7 \$60,000?

8 Our district has a 1982 diesel bus that
9 is a great polluter. The Tracy School
10 District has gotten money to replace
11 several of their buses. We've had a lot
12 of verbal promises that have never come
13 through.

14 In a recent conversation with Peter
15 Hanson he wanted to know just "what
16 Calpine could do for the school." When
17 I stated that we really were in need of
18 a new bus, he was most insistent that
19 Calpine would be more interested in
20 monies for teachers' salaries.

21 My feeling is that if we don't have a
22 bus to get our students to school we
23 won't need a third teacher, as students
24 won't be getting to school.

25 I was supposed to get back with Mr.

1 Hanson but I was so disappointed with
2 the way the conversation went that I
3 haven't returned the call.

4 Enclosed is a copy of the letter that
5 Calpine has sent to the Mountain House
6 School Board from Alicia Torre.

7 Although this is some of the
8 conversation we have had with Calpine
9 representatives, it is not the list of
10 items that we had discussed at previous
11 meetings.

12 I believe that Calpine thinks we are
13 just a little sliver under its skin and
14 they will put a little disinfectant on
15 it and will be better. We are a very
16 small school district, but we are
17 dedicated to giving our students the
18 best education available. It doesn't
19 seem fair to the school or community
20 that we'll be burdened with the impacts
21 of this plant. Sincerely, Marianne
22 Griffith."

23 HEARING OFFICER WILLIAMS: Thank you.

24 Okay. I guess, applicant, you get the final word.

25 MR. HARRIS: Just two thoughts. As we

1 go back to the question about the mitigation plan,
2 the ton versus tons per year issue. Two thoughts.

3 Number one, first off, you know, Tesla.
4 I don't want to talk about other cases, but to me
5 it's not all together surprising that a project
6 that's nearly the same size and nearly the same
7 location would have nearly the same settlement
8 agreement, if you will.

9 And so, in fact, I would be surprised if
10 they were wildly different. So I thought that was
11 an interesting fact to bring up.

12 But the bigger issue, the one I want
13 you to focus on is this issue of tons versus tons
14 per year. The incorrect statement and the fallacy
15 is that the AQMA, the agreement, does not
16 reference tons per year, as staff has stated. It
17 represents tons. It says 66 tons, not tons per
18 year.

19 That settlement agreement is a fee-based
20 agreement. The very first section of the
21 agreement, and this is actually exhibit 4G-3 for
22 the record, section 1 of that agreement which Mr.
23 Sarvey handed out, of the settlement agreement
24 sets forth the fee, the million dollars plus
25 there. And it talks about how the fee is

1 calculated.

2 You go all the way through this
3 agreement from that section 1 discussion of the
4 fee to the signature page and you do not see the
5 words tons anywhere. The first place you see the
6 word tons is in exhibit A-1 when it talks about
7 the calculation of the fee.

8 So the fundamental first principle here
9 is that this agreement is based on, it's a fee-
10 based agreement. The tons were used to calculate
11 the fee. It is not a tons per year as staff has
12 suggested. And I think to the extent that that's
13 clear, I think it's very important that that's
14 clear. Otherwise you're rewriting this agreement.
15 That is, I think, ultimately very important that
16 you not add what staff has asked you to add, the
17 tons per year language. Because it will
18 completely rewrite that agreement.

19 As I said at the beginning at quite some
20 length, I think the decision would be legally
21 defensible without the AQMA. I think you could go
22 on the strict legally defensible position. We've
23 chosen not to do that. In some respects I feel
24 like we're being penalized for doing the right
25 thing. But I think it was the right thing to do

1 both for the community and to let the project go
2 forward. We had to do this, I think, from a
3 practical perspective. Legally we didn't, but
4 practically we did.

5 And I just want the Committee to be very
6 careful and not to rewrite that settlement
7 agreement by adding the words tons per year,
8 because I think that totally changes everything.
9 And it's not supported. And this is important
10 legally, too, that change staff is seeking is not
11 supported by the record. And so you don't have a
12 basis to make change.

13 And so I want to end with that because I
14 think it's very important.

15 HEARING OFFICER WILLIAMS: Thank you.

16 Well, --

17 MS. DeCARLO: If we could just respond
18 to this minor point of the tons per year issue.

19 MR. LAYTON: We --

20 HEARING OFFICER WILLIAMS: No, no, no, I
21 think we're done. I think it's up to the
22 Committee,

23 MS. DeCARLO: Just a couple sentences.
24 The applicant was given the opportunity --

25 MR. LAYTON: Two sentences.

1 HEARING OFFICER WILLIAMS: Okay.

2 MR. HARRIS: We have the burden of
3 proof.

4 (Laughter.)

5 MR. HARRIS: You want the burden of
6 proof, I'll trade.

7 HEARING OFFICER WILLIAMS: Well, let me
8 just say this. I think I've tried to make clear
9 what the Committee's inclination is on this issue.
10 I think it's something that the Committee --

11 PRESIDING MEMBER KEESE: -- seconds.

12 MR. LAYTON: Okay. We have no interest
13 in your rewriting the AQMA. I understand there's
14 not much mention of tons throughout it. The table
15 on the very end talks about tons per year, which
16 is the emissions liability from the plant.

17 It comes up with a number of 66 tons. I
18 don't know if it's tons per year or not. We would
19 just like clarification in the decision, which you
20 have full authority to write, that it be tons per
21 year.

22 HEARING OFFICER WILLIAMS: Mr. Sarvey.

23 MR. SARVEY: I think Mr. Harris here is
24 really stretching it here. In his own testimony
25 on page 8 he says first the applicant objects to

1 the provisions that require the payment of
2 additional funds if necessary to insure 68 tons
3 per year reductions. His own testimony says that.

4 So, I mean -- and then he goes on
5 further to say that it should be allowed to
6 require 33.4 tons per year.

7 So he's fully aware that the mitigation
8 agreement is tons per year.

9 And then one other issue I want to bring
10 up, and that's related to this decision. This
11 conference was brought together here to resolve
12 the issues with the decision. And the matters
13 discussed here are significant to all parties.
14 And the Committee may be contemplating major
15 revisions to this decision.

16 And CEQA requires that the public be
17 given time to respond to major changes in
18 environmental document. And with this matter
19 going before the full Commission on Wednesday it
20 is doubtful that we'll even get your revisions to
21 your decision. So I think we really should
22 reschedule that full Committee decision and give
23 the public time to respond to any major changes in
24 the decision.

25 Thank you, Major.

1 HEARING OFFICER WILLIAMS: You're
2 welcome.

3 PRESIDING MEMBER KEESE: Thank you.

4 COMMISSIONER PERNELL: Thank you, Mr.
5 Sarvey.

6 MS. DeCARLO: If I may just have one
7 minute to respond --

8 (Laughter.)

9 MS. DeCARLO: No, no, no, not to these
10 issues, just to the other corrections the
11 applicant has proposed. Just to let the Committee
12 know where we agree and where we disagree, just so
13 there's --

14 PRESIDING MEMBER KEESE: Okay.

15 COMMISSIONER PERNELL: All right.

16 MS. DeCARLO: Okay, starting on page 20,
17 we agree with all the changes under other
18 corrections.

19 MR. HARRIS: I'm sorry, page 20 of what?

20 MS. DeCARLO: The applicant's comments.

21 PRESIDING MEMBER KEESE: All the final,
22 your additional items which we didn't get to.

23 MS. DeCARLO: Just so the record is
24 clear where stand.

25 PRESIDING MEMBER KEESE: That would be

1 very helpful, actually. Do you understand what
2 we're talking about?

3 MS. DeCARLO: So the Committee doesn't
4 have to ponder those issues, as well.

5 MR. HARRIS: Yeah, okay, we're with you
6 now. Sorry.

7 MS. DeCARLO: Okay, so all the ones on
8 20 under other corrections. All the ones under 21
9 for hazmat; we did agree to those changes.

10 Now I'll just highlight those where
11 we've spent a little bit of time. We disagree
12 with the comments on page 22 regarding page 301
13 and page 350 of the PMPD. And we believe the
14 Committee did an excellent job of summarizing the
15 issue. We believe that the discussion bulleted
16 items on page 301 represent staff's conclusion
17 which is what they're intended to represent.

18 PRESIDING MEMBER KEESE: Okay, just tell
19 us what you disagree with.

20 MS. DeCARLO: Okay, and then finally
21 socio-2, we disagree with the proposed
22 modification. We're concerned that with just a
23 slight --

24 PRESIDING MEMBER KEESE: Where are we?

25 MS. DeCARLO: Page 23, I'm sorry, the

1 very last --

2 PRESIDING MEMBER KEESE: The
3 verification stuff?

4 MS. DeCARLO: Right. We're concerned
5 that with a minor change in the square footage
6 would require a complete modification to the
7 condition in that process. And we believe that
8 the 33 cents reference is sufficient to give an
9 indication of how much the ultimate requirement
10 will be.

11 PRESIDING MEMBER KEESE: Okay. Thank
12 you, everyone.

13 COMMISSIONER PERNELL: Thank you.

14 HEARING OFFICER WILLIAMS: Thank you,
15 everyone.

16 (Whereupon, at 3:42 p.m., the Public
17 Committee Conference was adjourned.)

18 --o0o--

19

20

21

22

23

24

25

CERTIFICATE OF REPORTER

I, PETER PETTY, an Electronic Reporter,
do hereby certify that I am a disinterested person
herein; that I recorded the foregoing California
Energy Commission Public Committee Conference;
that it was thereafter transcribed into
typewriting.

I further certify that I am not of
counsel or attorney for any of the parties to said
conference, nor in any way interested in outcome
of said conference.

IN WITNESS WHEREOF, I have hereunto set
my hand this 6th day of June, 2003.

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345